

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,) Case No. 2001-CR-793
)
Plaintiff)
)
-vs-) JUDGE JOHN M. STUARD
)
DONNA M. ROBERTS,)
) PARTIAL
Defendant) TRANSCRIPT OF PROCEEDINGS

VOLUME XXI

JURY TRIAL - VOIR DIRE
MAY 8, 2003

BEFORE: HONORABLE JOHN M. STUARD

AT: Trumbull Co. Court of Common Pleas
Courtroom Number 2
160 High Street, NW
Warren, Ohio 44481

APPEARANCES:

On behalf of the Plaintiff:
MESSRS. KENNETH N. BAILEY
and CHRISTOPHER D. BECKER,
Attorneys at Law

On behalf of the Defendant:
MESSRS. J. GERALD INGRAM
and JOHN B. JUHASZ,
Attorneys at Law

Official Court Reporter: Kelly J. Wilson

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1 (MAY 8, 2003)

2 THE COURT: We're going to handle
3 Mr. Arcuri first. Bring him in.

4 ATTY. INGRAM: Yes, Your Honor. And, you
5 know, these are not necessarily for Mr. Arcuri.

6 THE COURT: Yeah, I understand.

7 PROSPECTIVE JUROR MICHAEL ARCURI

8 THE COURT: Michael, have a seat right up
9 here, if you will. How are you this afternoon?

10 MICHAEL ARCURI: I'm not feeling real
11 well. I don't know, like I've got a lot of stress going on
12 with selling the house and thinking of this and my wife
13 leaving. I like had a couple minor seizures the last few
14 days and today I'm not feeling real well, like my left side.
15 I sort of get disoriented.

16 THE COURT: Okay. Your medical problems
17 you explained earlier are getting worse?

18 MICHAEL ARCURI: Yeah. I didn't think it
19 would cause me a problem, but I'm afraid that if I do it and
20 then we're here in the middle of it and the stress doesn't
21 subside and then I end up seizing and have to be hospitalized
22 or something.

23 THE COURT: So you're not comfortable with

1 continuing on the --

2 MICHAEL ARCURI: Not really.

3 THE COURT: -- on this prospective jury?

4 Does the State have any questions you wish to ask?

5 ATTY. BAILEY: No, Your Honor.

6 ATTY. INGRAM: No, Your Honor. No

7 objection from the defense.

8 THE COURT: May I excuse for cause then?

9 ATTY. INGRAM: No objection.

10 THE COURT: You're excused. We thank you

11 for your time and I wish you well.

12 MICHAEL ARCURI: I'm sorry about that.

13 THE COURT: That's okay. You got to take

14 the situation as it is. Thank you.

15 MICHAEL ARCURI: Okay.

16 (Whereupon, Michael Arcuri was dismissed
17 from the pool of prospective jurors for cause.)

18 (Whereupon, a discussion was had off the
19 record.)

20 ATTY. BAILEY: We're going to lose that
21 first one, Juror No. 4, Rowley. She's going on vacation June
22 1st and that will be right at the end of the first --

23 ATTY. INGRAM: She's going to be the first

1 person we talk to.

2 ATTY. BECKER: Yeah, but, I mean, we're
3 going to --

4 ATTY. INGRAM: Yeah, I know.

5 THE COURT: Well, we got to bring her up
6 and put it on the record. Ask her to send up Ms. --

7 THE BAILIFF: You're just doing them one
8 at a time again?

9 THE COURT: Well, just for three questions
10 I'm going to ask.

11 ATTY. INGRAM: You know what? You don't
12 want Rowley to tell the rest of them how to kick themselves
13 off the case. It's only three questions.

14 THE BAILIFF: All right.

15 ATTY. INGRAM: And only the judge is going
16 to ask the questions.

17 THE BAILIFF: All right. I can stand it
18 for that long.

19 (Whereupon, a brief recess was taken.)

20 THE COURT: Hello.

21 ASSISTANT JURY COMMISSIONER: Hi. This
22 Kasey, she didn't call in, that's why, so she's on her way.
23 And the other man, Michael?

1 COURT REPORTER: Todd.

2 ASSISTANT JURY COMMISSIONER: Todd. He
3 said he told everybody that he was going to be in domestic
4 court today.

5 ATTY. JUHASZ: Oh, she's right.

6 ATTY. INGRAM: Okay.

7 ATTY. BECKER: He's getting divorced.

8 ATTY. INGRAM: Yeah, he did. He did.

9 ATTY. JUHASZ: Today is May 8th.

10 ASSISTANT JURY COMMISSIONER: He thinks he
11 is only going to be there a half an hour.

12 ATTY. BECKER: We can bring him in, we can
13 bring him in --

14 ASSISTANT JURY COMMISSIONER: I said to
15 come down after he was done.

16 ATTY. INGRAM: Okay.

17 ASSISTANT JURY COMMISSIONER: But I didn't
18 know if you wanted to do that.

19 ATTY. INGRAM: That's fine.

20 THE COURT: Everybody will agree to take
21 him out of order then?

22 ATTY. INGRAM: Is that okay with you guys?

23 ATTY. BECKER: That's fine with us.

1 ASSISTANT JURY COMMISSIONER: He's at the
2 end, I mean, he's down towards the end. It's a custody case.

3 ATTY. JUHASZ: No, it's a pretrial.

4 THE BAILIFF: He may not be in a great
5 mood.

6 THE COURT: He's not here yet, right?

7 ASSISTANT JURY COMMISSIONER: No, he's not
8 here.

9 THE COURT: Why don't you send up the
10 first one on the list that is here?

11 ASSISTANT JURY COMMISSIONER: You know
12 what I'm going to do, have one come in and then have a couple
13 out in the hall; is that all right?

14 ATTY. INGRAM: Yeah.

15 THE COURT: Yeah. You want Rowley first,
16 right?

17 ATTY. INGRAM: Yes, Your Honor.

18 ATTY. BECKER: Right.

19 ATTY. INGRAM: Just go down the list and
20 if they're here we'll just go down the list.

21 ASSISTANT JURY COMMISSIONER: And they are
22 except for that one lady.

23 COURT REPORTER: Send Rowley in and tell

1 the next two or three to wait out in the hall.

2 ASSISTANT JURY COMMISSIONER: All right.

3 COURT REPORTER: Thanks, Deb.

4 (Whereupon, a brief recess was taken.)

5 ATTY. INGRAM: Gentlemen, if Acuri's

6 hearing is at 3:00.

7 ATTY. JUHASZ: Davidson.

8 ATTY. BECKER: Davidson.

9 ATTY. INGRAM: Why don't we ask him if he
10 can stop here before going there?

11 ATTY. BECKER: I thought that's what she
12 was doing? She's not bringing him down?

13 ATTY. INGRAM: No, after.

14 ATTY. BECKER: Oh. Okay.

15 ATTY. BAILEY: We're going to get to him,
16 I would expect, when we start exercising peremptories because
17 he's 20.

18 CAPTAIN BACON: He's already down there,
19 isn't he?

20 COURT REPORTER: No.

21 ATTY. INGRAM: He's a block away, I mean.

22 THE BAILIFF: Just what he needs, to come
23 here before he goes to a custody hearing.

1 ATTY. INGRAM: That's true. All right.

2 (Whereupon, a brief recess was taken.)

3 PROSPECTIVE JUROR W. JEAN ROWLEY

4 THE COURT: Ma'am, have a seat up here, if
5 you will. Good afternoon, Ms. Rowley.

6 W. JEAN ROWLEY: Hello.

7 THE COURT: I understand that you have
8 some vacation plans?

9 W. JEAN ROWLEY: (Nods head
10 affirmatively.)

11 THE COURT: Will you explain to us what
12 those are?

13 W. JEAN ROWLEY: Yes. Our oldest
14 granddaughter is finishing her medical residency in
15 Greenville, North Carolina, the 1st of June.

16 THE COURT: And you are going to baby-sit
17 after that, is that the one?

18 W. JEAN ROWLEY: What?

19 THE COURT: You were to baby-sit after
20 that?

21 W. JEAN ROWLEY: No.

22 THE COURT: I must be mistaken. Okay.

23 W. JEAN ROWLEY: I'm not baby-sitting.

1 I'm not baby-sitting, but we were going over for the hospital
2 reception and then a family celebration.

3 THE COURT: Okay. And when are you
4 planning on leaving?

5 W. JEAN ROWLEY: We have to be over there
6 the 2nd and we'll come back the next Sunday, the 8th I think
7 it is.

8 THE COURT: Okay. Questions by the State?

9 ATTY. BAILEY: Yeah. Ma'am, you told us
10 you were leaving for vacation the first time, right?

11 W. JEAN ROWLEY: No, I didn't, I called in
12 Monday morning, because when this started I thought it would
13 all be over by now and I had no plans until June. I didn't
14 understand how the system works and so I did not say anything
15 to start out with. But I called in Monday morning because I
16 got concerned when I saw how long things were taking.

17 ATTY. BAILEY: So if I understand, you do
18 want to go to North Carolina?

19 W. JEAN ROWLEY: I sure do.

20 ATTY. BAILEY: And that's when?

21 W. JEAN ROWLEY: The 3rd of June.

22 ATTY. BAILEY: June 3rd. Well, do you
23 have any problem or --

1 ATTY. INGRAM: No questions.

2 ATTY. BAILEY: Okay. We don't have a
3 problem excusing her so she can go.

4 THE COURT: No objection to dismissing for
5 cause?

6 ATTY. JUHASZ: No, sir.

7 THE COURT: Enjoy yourself, ma'am.

8 W. JEAN ROWLEY: I certainly appreciate
9 it. I did not anticipate this --

10 THE COURT: Well, it's not your fault by
11 any means. Thank you for your attendance and your
12 cooperation.

13 ATTY. BAILEY: Have a good day.

14 ATTY. Becker: Thank you very much.

15 ATTY. INGRAM: Thanks, ma'am.

16 W. JEAN ROWLEY: You're welcome. I held
17 her when she cried, when things didn't go right, so I have to
18 be there to celebrate.

19 ATTY. BECKER: Oh, yeah.

20 ATTY. JUHASZ: Thanks, ma'am.

21 (Whereupon, W. Jean Rowley was dismissed
22 from the pool of prospective jurors for cause, after which a
23 discussion was held off the record.)

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PROSPECTIVE JUROR TILGHMAN GRAY

THE COURT: Good afternoon.

TILGHMAN GRAY: Hi.

THE COURT: I'll ask you three questions here. Has anything occurred since we last spoke which might affect your ability to serve as a fair-minded juror in this case?

TILGHMAN GRAY: No.

THE COURT: When you were last here many questions were put to you by both sides. Do you presently have any reason to change or amend any response that you gave to any of those questions put to you?

TILGHMAN GRAY: No, I don't.

THE COURT: Is there any reason why you are unable to continue your service in this most important cause which may last up until the first week of June?

TILGHMAN GRAY: No. I'm going away over Memorial weekend but I'll only be gone Saturday, Sunday Monday.

THE COURT: You'll just be gone on the days that the rest of us will have off?

TILGHMAN GRAY: Right.

THE COURT: Okay. Fine. Very good.

1 ATTY. BECKER: Your Honor.

2 ATTY. JUHASZ: May we?

3 THE COURT: Yeah, that's a possibility.

4 ATTY. JUHASZ: Uh-huh.

5 (Whereupon, a bench conference was held.)

6 THE COURT: Okay. Folks, I would suggest
7 that we send each of these potential jurors back down with an
8 instruction not to discuss anything, okay?

9 ATTY. BECKER: You're going to let them
10 go?

11 ATTY. INGRAM: No.

12 ATTY. JUHASZ: No, no.

13 THE COURT: We're all kind of flying by
14 the seat of our pants because these things are always, you
15 know, jumbled like this and no one can figure a better way to
16 do it. Please go back down, have a seat there. I would ask
17 you not to discuss with any of the other jurors that haven't
18 been up, or with anybody, anything about what questions were
19 asked or anything that happened up here, okay?

20 TILGHMAN GRAY: Okay.

21 THE COURT: We'll see you in a little bit.
22 Thank you.

23 TILGHMAN GRAY: All righty.

1 THE COURT: You have another one out there
2 waiting for us?

3 CAPTAIN BACON: Yeah.

4 THE COURT: What you should do is each one
5 that goes down, send up one more to sit out here.

6 TILGHMAN GRAY: Send one more up?

7 THE COURT: Yeah.

8 (Whereupon, Tilghman Gray was excused from
9 the courtroom and the proceedings commenced with the next
10 prospective juror as follows.)

11 PROSPECTIVE JUROR RICHARD CARAWAY

12 THE COURT: Good afternoon, sir.

13 RICHARD CARAWAY: Good afternoon.

14 THE COURT: All right. Three questions to
15 ask. Has anything occurred since we last spoke which might
16 affect your ability to serve as a fair-minded juror in this
17 case?

18 RICHARD CARAWAY: No.

19 THE COURT: Okay. When you were last here
20 there were many questions put to you by both sides. Do you
21 presently have any reason to change or amend any response
22 given to those questions?

23 RICHARD CARAWAY: No.

1 THE COURT: Is there any reason why you
2 are unable to continue your service in this important case
3 which may last until the first week of June?

4 RICHARD CARAWAY: No.

5 THE COURT: Okay. Very good. Please have
6 a seat back down there and don't discuss with anybody the
7 reason or the questions asked up here, okay?

8 RICHARD CARAWAY: Okay.

9 THE COURT: And we'll have you back up
10 later.

11 RICHARD CARAWAY: Okay.

12 THE COURT: When you go down send up
13 another juror, if you would.

14 RICHARD CARAWAY: Okay.

15 THE COURT: Okay. Thank you.

16 (Whereupon, Richard Caraway was excused
17 from the courtroom.)

18 THE COURT: I think, gentlemen, that's "a"
19 rather than "e" on the word effect; affect.

20 ATTY. BECKER: Oh, that would be my fault.

21 ATTY. INGRAM: I had it typed with an "a"
22 and the prosecutor unilaterally without authorization tried
23 to change my language.

1 THE COURT: Well, I'm not casting any
2 aspersion.

3 PROSPECTIVE JUROR MAXINE HOWARD

4 THE COURT: Good afternoon. How are you?

5 MAXINE HOWARD: Fine, thank you. How are
6 you?

7 THE COURT: I have three short questions
8 for you. Has anything occurred since we last spoke which
9 might affect your ability to serve as a fair-minded juror in
10 this case?

11 MAXINE HOWARD: No, sir.

12 THE COURT: When you were here last many
13 questions were put to you by both sides. Do you presently
14 have any reason to change or amend your responses to any of
15 those questions?

16 MAXINE HOWARD: No.

17 THE COURT: Is there any reason you are
18 unable to continue your service in this most important case
19 which might last until the first week of June?

20 MAXINE HOWARD: No, sir.

21 THE COURT: Okay. Very good. Please
22 don't discuss these questions or why you were brought up
23 here. Go back down and have seat and we'll have you all up

1 later. Send up the next juror, if you would. Tell Connie.

2 MAXINE HOWARD: Yes, sir.

3 (Whereupon, Maxine Howard was excused from
4 the courtroom and the proceedings commenced with the next
5 prospective juror as follows.)

6 PROSPECTIVE JUROR GEORGE DERMER

7 THE COURT: Have a seat right up here, if
8 you will. Mr. Dermer, I have three questions for you. Has
9 anything occurred since we last spoke which might affect your
10 ability to serve as a fair-minded juror in this case?

11 GEORGE DERMER: No.

12 THE COURT: When you were here last there
13 were many questions put to you by both sides. Do you
14 presently have any reason to change or amend your responses
15 to any of those questions?

16 GEORGE DERMER: No.

17 THE COURT: Is there any reason why you
18 are unable to continue your service in this most important
19 case which may last until the first week of June?

20 GEORGE DERMER: No.

21 THE COURT: No problem? Very good.
22 Please go down, back down. We're going to have you all up
23 together a little bit later. Don't discuss anything about

1 what you've done up here.

2 ATTY. BECKER: Thank you, Mr. Dermer.

3 ATTY. INGRAM: Thank you.

4 ATTY. JUHASZ: Thank you, sir.

5 (Whereupon, George Dermer was excused from
6 the courtroom and the proceedings commenced with the next
7 prospective juror as follows.)

8 PROSPECTIVE JUROR KAREN TIPTON

9 THE COURT: Ma'am, have a seat right up
10 here, if you will. Good afternoon, Karen.

11 KAREN TIPTON: Hi.

12 THE COURT: Three short questions for you.
13 Has anything occurred since we last spoke which might affect
14 your ability to serve as a fair-minded juror in this case?

15 KAREN TIPTON: No.

16 THE COURT: When you were here last there
17 were many questions put to you. Do you presently have any
18 reason to change or amend your response to any question given
19 to you at that time?

20 KAREN TIPTON: No.

21 THE COURT: Is there any reason why you
22 are unable to continue your service in this most important
23 case which may last until the first week of June?

1 KAREN TIPTON: No.

2 THE COURT: No? Okay. Very good. Please
3 have a seat back down there. We'll have you all up here
4 together later. And don't discuss anything about why you
5 came up at this point.

6 KAREN TIPTON: Okay.

7 THE COURT: Thank you, ma'am.

8 ATTY. BECKER: Thank you.

9 ATTY. JUHASZ: Thank you.

10 ATTY. INGRAM: Thank you, ma'am.

11 (Whereupon, Karen Tipton was excused from
12 the courtroom and the proceedings commenced with the next
13 prospective juror as follows.)

14 PROSPECTIVE JUROR BRAD SEELBACK

15 THE COURT: Brad, have a seat up here, if
16 you will. Good afternoon.

17 BRAD SEELBACK: Good afternoon.

18 THE COURT: Three questions for you.

19 BRAD SEELBACK: Yes, sir.

20 THE COURT: Has anything occurred since we
21 last spoke which might affect your ability to serve as a
22 fair-minded juror in this matter?

23 BRAD SEELBACK: No, sir.

1 THE COURT: When you were here last many
2 questions were put to you by both sides. Do you presently
3 have any reason to change or amend your responses to any
4 questions put to you?

5 BRAD SEELBACK: No, sir.

6 THE COURT: Is there any reason you are
7 unable to continue your service in this most important case
8 which may last until the first week of June?

9 BRAD SEELBACK: No, sir.

10 THE COURT: Okay, fine. Thank you.
11 Please wait down there. We'll have you all up together
12 later. Don't discuss why you were brought up with anybody.

13 BRAD SEELBACK: Okay.

14 (Whereupon, Brad Seelback was excused from
15 the courtroom and the proceedings commenced with the next
16 prospective juror as follows.)

17 PROSPECTIVE JUROR THOMAS CARMICHAEL

18 THE COURT: Have a seat up here, Tom.
19 Good afternoon, Tom.

20 THOMAS CARMICHAEL: How you doing?

21 THE COURT: Good. Three questions for
22 you. Has anything occurred since we last spoke which might
23 affect your ability to serve as a fair-minded juror in this

1 case?

2 THOMAS CARMICHAEL: Well, I got things to
3 do now. I mean, my family is coming into town. I have a
4 cousin in the Air Force that's coming.

5 THE COURT: Okay. Explain that to us.

6 THOMAS CARMICHAEL: I have a cousin in the
7 Air Force. He lives down in Texas, stationed down in Texas.
8 He's going to be here for two weeks. I would like to, you
9 know, be with him.

10 THE COURT: When is that? When is he
11 coming in?

12 THOMAS CARMICHAEL: About 10 days.

13 THE COURT: Is that over Labor Day or
14 what?

15 THOMAS CARMICHAEL: Yeah, it's over Labor
16 Day weekend.

17 THE COURT: Well, this Court, of course,
18 will be taking off over Labor Day, that Saturday, Sunday and
19 Monday. Is that sufficient time?

20 THOMAS CARMICHAEL: Maybe. Maybe.

21 THE BAILIFF: Memorial Day.

22 THE COURT: I'm sorry, Memorial Day. What
23 did I say, Labor Day?

1 ATTY. BECKER: The Court may want to also,
2 due to some scheduling problems, we're not going to be in
3 court Friday the 16th or Monday the 19th as well, so we'll
4 have a four-day weekend next week.

5 THE COURT: That's right. That's right.
6 That's not Memorial Day weekend then, though?

7 ATTY. BAILEY: The week before.

8 ATTY. BECKER: The week before, yeah,
9 that's the week before.

10 THE COURT: And we will have four days
11 off, the 16th through to that following Tuesday.

12 THOMAS CARMICHAEL: Uh-huh.

13 THE COURT: And then Memorial Day, three
14 days of Memorial Day the following week.

15 THOMAS CARMICHAEL: Okay.

16 THE COURT: Does that cause you any
17 problem?

18 THOMAS CARMICHAEL: No. I also have a
19 company picnic coming up. I think it's on the 21st of June.
20 The 21st of June.

21 THE COURT: A what?

22 THOMAS CARMICHAEL: The 21st of June, a
23 company picnic up at Six Flags. I want to take my girlfriend

1 there. I would like to have that week off, too, I mean.

2 ATTY. BAILEY: Judge, we should be done
3 long before that day. We should be done the first week of
4 June if it goes into two phases.

5 THOMAS CARMICHAEL: Okay.

6 THE COURT: Approach the bench, please.

7 (Whereupon, a bench conference was held.)

8 THE COURT: Okay. A couple other
9 questions for you here.

10 THOMAS CARMICHAEL: Okay.

11 THE COURT: When you were last here many
12 questions were put to you by both sides. Do you presently
13 have any reason to change or amend your response to any
14 question put to you?

15 THOMAS CARMICHAEL: No.

16 THE COURT: Is there any reason you are
17 unable to continue your service in this most important case
18 which may last until the first week of June, outside of the
19 things that you already told us?

20 THOMAS CARMICHAEL: Not that I'm aware of.

21 THE COURT: Okay, fine. Would you please
22 go back down, have a seat down there, and don't discuss with
23 anybody the questions that were put to you, okay?

1 THOMAS CARMICHAEL: Okay.

2 THE COURT: We're going to have you all
3 back up here together in a little bit. Thank you.

4 ATTY. BECKER: Thank you.

5 (Whereupon, Thomas Carmichael was excused
6 from the courtroom and the proceedings commenced with the
7 next prospective juror as follows.)

8 PROSPECTIVE JUROR LINDA BLACK

9 THE COURT: Good afternoon. How are you?

10 LINDA BLACK: Good afternoon. Good.

11 THE COURT: Good. Three questions for
12 you. Has anything occurred since we last spoke which might
13 affect your ability to serve as a fair-minded juror in this
14 case?

15 LINDA BLACK: No.

16 ATTY. INGRAM: When you were last here
17 there were many questions put to you by both sides. Do you
18 presently have any reason to change or amend your responses
19 to those questions?

20 LINDA BLACK: No.

21 THE COURT: Is there any reason you are
22 unable to continue your service in this most important case
23 which may last until the first week of June?

1 LINDA BLACK: The only reason it would be
2 a problem is if we were sequestered. I do have dogs, I would
3 have to board them.

4 THE COURT: I didn't hear the last part.

5 LINDA BLACK: I have dogs, I would have to
6 board them. I live by myself.

7 THE COURT: Oh, you'd have to board them
8 for -- if you were sequestered?

9 LINDA BLACK: Sequestered, yes.

10 THE COURT: Okay. That is something you
11 can take care of because we don't know how long it's going to
12 take a jury, but historically around here three days is
13 unusual. It's usually a night. I had one, I think I had one
14 that had two nights.

15 LINDA BLACK: Okay.

16 THE COURT: But that would be something
17 you can live with?

18 LINDA BLACK: That's my only concern is
19 that.

20 THE COURT: Okay. You go on vacation, you
21 have to board them too probably?

22 LINDA BLACK: Yes.

23 THE COURT: Okay. Listen, if you would be

1 kind enough to wait back downstairs we'll have you all up
2 here in a little bit. Don't discuss what you were asked
3 while you were up here, okay?

4 LINDA BLACK: No.

5 THE COURT: Thank you.

6 LINDA BLACK: Thank you.

7 (Whereupon, Linda Black was excused from
8 the courtroom.)

9 THE COURT: Wait before you send the next
10 one in here.

11 ATTY. INGRAM: Off the record.

12 (Whereupon, a discussion was had off the
13 record.)

14 PROSPECTIVE JUROR PANDA HEATHERLY-LANTZ

15 THE COURT: How are you today?

16 PANDA HEATHERLY-LANTZ: I'm fine. You?

17 THE COURT: Good. Three questions for
18 you. Has anything occurred since we last spoke which might
19 affect your ability to serve as a fair-minded juror in this
20 case?

21 PANDA HEATHERLY-LANTZ: No.

22 THE COURT: When you were here last there
23 were many questions put to you by both sides. Do you

1 presently have any reason to change or amend your response to
2 any of those questions?

3 PANDA HEATHERLY-LANTZ: No.

4 THE COURT: Is there any reason you are
5 unable to continue your service in this most important case
6 which may last until the first week of June?

7 PANDA HEATHERLY-LANTZ: No.

8 THE COURT: Okay. Thank you.

9 PANDA HEATHERLY-LANTZ: You're welcome.

10 THE COURT: Please wait downstairs. We'll
11 have you all up here as a group later. And please don't
12 discuss anything about why you came up with the other ones.

13 PANDA HEATHERLY-LANTZ: Not a problem.
14 That's why I brought a book.

15 THE COURT: Okay. Thank you.

16 ATTY. INGRAM: Thank you.

17 ATTY. BECKER: Thank you.

18 ATTY. BAILEY: Thanks.

19 PANDA HEATHERLY-LANTZ: You're welcome.

20 (Whereupon, Panda Heatherly-Lantz was
21 excused from the courtroom and the proceedings commenced with
22 the next prospective juror as follows.)

23 PROSPECTIVE JUROR JOHN D. LANAM, SR.

1 THE COURT: Good afternoon, John.

2 JOHN D. LANAM, SR.: How you doing?

3 THE COURT: Good. Three questions for
4 you. Has anything occurred since we last spoke which might
5 affect your ability to serve as a fair-minded juror in this
6 case?

7 JOHN D. LANAM, SR.: No.

8 THE COURT: When you were here last many
9 questions were put to you by both sides. Do you presently
10 have any reason to change or amend your response to any of
11 those questions?

12 JOHN D. LANAM, SR.: No.

13 THE COURT: Is there any reason why you
14 are unable to continue your service in this most important
15 case which may last until the first week of June?

16 JOHN D. LANAM, SR.: No.

17 THE COURT: Okay. Very good. Please have
18 a seat back downstairs and don't discuss anything with
19 anybody in the meantime. We'll have you all back up here as
20 a group shortly.

21 JOHN D. LANAM, SR.: All right.

22 (Whereupon, John D. Lanam, Sr. was excused
23 from the courtroom and the proceedings commenced with the

1 next prospective juror as follows.)

2 PROSPECTIVE JUROR KEVIN B. PATTERSON

3 THE COURT: Mr. Patterson, have a seat up
4 here. How are you doing today?

5 KEVIN B. PATTERSON: Good.

6 THE COURT: Good. Three questions for
7 you. Has anything occurred since we last spoke which might
8 affect your ability to serve as a fair-minded juror in this
9 case?

10 KEVIN B. PATTERSON: My agency makeup has
11 changed some. My director was put on administrative leave
12 and is under investigation so they made one of my
13 counterparts the acting director and there's four of us doing
14 the work that six of us did before. However, I mean, it's
15 going to be there one way or another.

16 THE COURT: Yeah. Sounds like the company
17 is going to get behind one way or the other, right?

18 KEVIN B. PATTERSON: Probably would, yeah.
19 Other than that, no.

20 THE COURT: Okay. When you were here last
21 many questions were put to you by both sides. Do you
22 presently have any reason to change or amend your response to
23 any of those questions?

1 KEVIN B. PATTERSON: No, I do not, no.

2 THE COURT: Is there any reason you are
3 unable to continue your service in this most important case
4 which may last until the first week of June?

5 KEVIN B. PATTERSON: No.

6 THE COURT: Okay. Very good. Have a seat
7 back down there. We'll have you all up together in a few
8 moments here, or a few minutes. And not to discuss anything
9 in the meantime about why you came up here, okay?

10 KEVIN B. PATTERSON: Okay.

11 THE COURT: Thank you.

12 (Whereupon, Kevin B. Patterson was excused
13 from the courtroom and the proceedings commenced with the
14 next prospective juror as follows.)

15 PROSPECTIVE JUROR MARSHA J. DANADIC

16 THE COURT: Good afternoon, Marsha.

17 MARSHA J. DANADIC: Hi.

18 THE COURT: Three questions for you.

19 MARSHA J. DANADIC: Okay.

20 THE COURT: Has anything occurred since we
21 last spoke which might affect your ability to serve as a
22 fair-minded juror in this case?

23 MARSHA J. DANADIC: No.

1 THE COURT: When you were last here many
2 questions were put to you by both sides. Do you presently
3 have any reason to change or amend your response to any
4 question put?

5 MARSHA J. DANADIC: No.

6 THE COURT: Is there any reason you are
7 unable to continue your service in this most important case
8 which may last until the first week of June?

9 MARSHA J. DANADIC: (Shaking head
10 negatively.)

11 THE COURT: No problem?

12 MARSHA J. DANADIC: No.

13 THE COURT: Okay. Thank you. Have a seat
14 down there. We'll have you all back up shortly, and not to
15 talk with anybody about why you came up, okay?

16 MARSHA J. DANADIC: Okay. Downstairs
17 again you mean?

18 THE COURT: I'm sorry?

19 MARSHA J. DANADIC: I go back downstairs?

20 THE COURT: Yeah.

21 ATTY. BAILEY: Thank you.

22 ATTY. BECKER: Thanks.

23 ATTY. JUHASZ: Thank you.

1 ATTY. INGRAM: Thanks.

2 (Whereupon, Marsha J. Danadic was excused
3 from the courtroom and the proceedings commenced with the
4 next prospective juror as follows.)

5 PROSPECTIVE JUROR MOSELLE DICENSO

6 THE COURT: Good afternoon.

7 MOSELLE DICENSO: Good afternoon.

8 THE COURT: Three questions here. Has
9 anything occurred since we last spoke which might affect your
10 ability to serve as a fair-minded juror in this matter?

11 MOSELLE DICENSO: Not that, but I do have
12 a conflict. On the 28th of May my daughter is having surgery
13 which I didn't know the last time I was here.

14 THE COURT: What, what is this about?

15 MOSELLE DICENSO: I'm sorry?

16 THE COURT: What is your conflict.

17 MOSELLE DICENSO: My daughter is having
18 surgery on the 28th of May.

19 THE COURT: Oh, she's having surgery. The
20 28th of May?

21 MOSELLE DICENSO: (Nods head
22 affirmatively.)

23 THE COURT: Okay. Let me ask you these

1 other questions.

2 MOSELLE DICENSO: Okay.

3 THE COURT: We'll take care of that. When
4 you were last here many questions were put to you by both
5 sides. Do you presently have any reason to change or amend
6 your responses given at that time?

7 MOSELLE DICENSO: No.

8 THE COURT: Is there any reason you are
9 unable to continue your service in this most important case
10 which may last until the first week of June, other than --

11 MOSELLE DICENSO: No, not other than that.

12 THE COURT: No other reason?

13 MOSELLE DICENSO: No.

14 THE COURT: Okay. Fine. Would you please
15 have a seat down there. We'll have you all up here shortly.

16 MOSELLE DICENSO: Okay.

17 THE COURT: And not to discuss anything
18 about why you came up.

19 MOSELLE DICENSO: Okay.

20 ATTY. BAILEY: Judge, perhaps we should
21 inquire first.

22 THE COURT: Yeah.

23 ATTY. BECKER: Yeah, have a seat.

1 THE COURT: Have a seat for a moment.

2 Come on up.

3 (Whereupon, a bench conference was held.)

4 THE COURT: Let me ask you a couple more
5 questions.

6 MOSELLE DICENSO: Okay.

7 THE COURT: You have two daughters. One
8 is in Columbus, I believe, and the other one is local here.
9 Which daughter is it?

10 MOSELLE DICENSO: The one in Columbus.

11 THE COURT: Okay. And I'm not trying to
12 pry into your personal affairs. This is a very important
13 thing that we're trying to do here, as you know by now. Is
14 it major surgery?

15 MOSELLE DICENSO: No.

16 THE COURT: It's minor surgery?

17 MOSELLE DICENSO: It's foot surgery.

18 THE COURT: Okay. Can you see that there
19 would be more than one day's absence on your part, or do you
20 have other obligations besides, you know?

21 MOSELLE DICENSO: We're going to leave
22 here on Tuesday night and she has the surgery on Wednesday
23 and then we're going to bring her back here on Thursday.

1 THE COURT: Well, so it would be two days
2 at a minimum you would be gone?

3 MOSELLE DICENSO: Two days would be what,
4 unless something would go wrong, which I am not thinking but.

5 THE COURT: Do you wish side bar?

6 ATTY. BAILEY: Yes, Your Honor.

7 (Whereupon, a bench conference was held.)

8 THE COURT: Would you please go back
9 downstairs and we're going to have everybody up in the group,
10 okay?

11 MOSELLE DICENSO: Okay.

12 THE COURT: You're not to discuss anything
13 while you're down there.

14 MOSELLE DICENSO: Okay.

15 (Whereupon, Moselle Dicenso was excused
16 from the courtroom.)

17 ATTY. BECKER: Your Honor, I don't know
18 what the procedure is here that we're -- I mean, I understand
19 the function that we're doing and I just want to make sure
20 that we're just going to call these people now. Unless
21 there's some really extenuating circumstance like they're
22 having surgery on themselves, we're not going to let them go.

23 ATTY. INGRAM: Right.

1 ATTY. BECKER: So unless they've got some
2 kind of, you know, emergency footology operation or, you
3 know, whatever, like ear lowering surgery or something, we're
4 not going to let them go unless they tell us they've got a
5 real serious problem with them themselves?

6 ATTY. INGRAM: That's my sentiment.

7 ATTY. BECKER: Okay.

8 ATTY. BAILEY: But I don't understand.
9 She says that she's got plans already to leave town for her
10 daughter's surgery, which is on the 28th, so she's leaving.
11 She's going to be in Columbus on the 27th.

12 THE COURT: Right.

13 ATTY. BAILEY: And then she's going to be
14 gone on the 28th for the surgery. If there's problems there,
15 she won't be back, and she's not planning on coming back
16 until the next day if everything goes right on the 29th. So
17 does that mean --

18 ATTY. INGRAM: I would suggest her husband
19 could pick her daughter up.

20 THE COURT: I think she was leaving it
21 open-ended as to what was going to happen as a result of the
22 surgery. She was going to bring her daughter back unless she
23 said she was able to walk or something, then I don't know

1 what she's going to do.

2 Now, the thing is with this amount of time you're
3 going to have half these people that are going to have
4 something that's come up. You're going to have to make some
5 hard and fast criteria of either telling them you can't, you
6 got to be here, which means you're going to have some
7 disgruntled people on the jury.

8 ATTY. INGRAM: I tell you what, may I
9 approach, Your Honor?

10 ATTY. BAILEY: Because I think we left her
11 with the idea that she would be able to go to the surgery,
12 and that's going to be close to the end of the case.

13 (Whereupon, a discussion was had off the
14 record.)

15 THE COURT: Have the next one come in.

16 PROSPECTIVE JUROR THELMA L. RANKIN

17 THE COURT: How are you this afternoon?

18 THELMA L. RANKIN: I'm good. How are you?

19 THE COURT: Good. Three questions. Has
20 anything occurred since we spoke last which might affect your
21 ability to serve as a fair-minded juror in this matter?

22 THELMA L. RANKIN: No.

23 THE COURT: When you were here last there

1 were many questions put to you by both sides. Do you
2 presently have any reason to change or amend any of those
3 answers?

4 THELMA L. RANKIN: No.

5 THE COURT: Is there any reason you are
6 unable to continue your service in this most important case
7 which may last up until the first week of June?

8 THELMA L. RANKIN: No, I don't have any
9 reason to change anything. I don't have anything that's
10 going to stop me from serving.

11 THE COURT: Okay. We appreciate that very
12 much.

13 THELMA L. RANKIN: Okay.

14 THE COURT: Please wait back downstairs.
15 We're going to have you all up here together shortly.

16 THELMA L. RANKIN: Okay. Thank you.

17 THE COURT: Thank you. You're not to
18 discuss anything with anybody as to why you were up here.

19 THELMA L. RANKIN: Okay.

20 ATTY. BECKER: Thank you, Ms. Rankin.

21 ATTY. BAILEY: Thank you.

22 ATTY. JUHASZ: Thank you.

23 ATTY. INGRAM: Thanks, ma'am.

1 (Whereupon, Thelma L. Rankin was excused
2 from the courtroom and the proceedings commenced with the
3 next prospective juror as follows.)

4 PROSPECTIVE JUROR KASEY S. KELLY

5 THE COURT: You are familiar with that
6 chair. Have a seat. Three questions for you, ma'am. Has
7 anything occurred since we last spoke which might affect your
8 ability to serve as a fair-minded juror in this matter?

9 KASEY S. KELLY: No.

10 THE COURT: When you were here last many
11 questions were put to you by both sides. Do you presently
12 have any reason to change or amend any of your answers?

13 KASEY S. KELLY: No.

14 THE COURT: Is there any reason why you
15 are unable to continue your service in this most important
16 case which may last until the first week of June?

17 KASEY S. KELLY: No.

18 THE COURT: Okay. Very good. Please wait
19 back downstairs. We'll have you all up here shortly. Not to
20 discuss anything about why you came up.

21 KASEY S. KELLY: Okay.

22 THE COURT: Okay. Thank you.

23 (Whereupon, Kasey S. Kelly was excused

1 from the courtroom and the proceedings commenced with the
2 next prospective juror as follows.)

3 PROSPECTIVE JUROR MARY J. COSTELLO

4 THE COURT: How are you today?

5 MARY J. COSTELLO: I'm good.

6 THE COURT: Good. Three questions for
7 you. Has anything occurred since we last spoke which might
8 affect your ability to serve as a fair-minded juror?

9 MARY J. COSTELLO: No.

10 THE COURT: When you were last here many
11 questions were put to you by both sides. Do you presently
12 have any reason to change or amend your responses to any of
13 those questions?

14 MARY J. COSTELLO: No.

15 THE COURT: Is there any reason you are
16 unable to continue your service in this most important case
17 which may last until the first week of June?

18 MARY J. COSTELLO: I am going away the
19 last weekend of May. May 30th I have plans on going to
20 Chicago.

21 THE COURT: For what period of time?

22 MARY J. COSTELLO: For the weekend.

23 THE COURT: For the week?

1 MARY J. COSTELLO: Yeah. For the weekend,
2 yeah.

3 THE COURT: For the weekend?

4 MARY J. COSTELLO: Yes.

5 THE COURT: Give me your itinerary. When
6 are you leaving, on Friday?

7 MARY J. COSTELLO: I'm leaving Friday at
8 1:00 o'clock and returning home Sunday evening at 7:00.

9 THE COURT: Okay. Very good. Please go
10 back downstairs and we will have you all up here shortly.

11 MARY J. COSTELLO: Okay.

12 THE COURT: And you're not to discuss
13 anything about why you came up in the meantime, okay?

14 MARY J. COSTELLO: Okay.

15 THE COURT: Thank you.

16 ATTY. JUHASZ: Thank you.

17 ATTY. BECKER: Thank you.

18 (Whereupon, Mary J. Costello was excused
19 from the courtroom and the proceedings commenced with the
20 next prospective juror as follows.)

21 PROSPECTIVE JUROR ROBIN SCHLAEGEL

22 THE COURT: Good afternoon, ma'am.

23 ROBIN SCHLAEGEL: Hi.

1 THE COURT: Three questions for you. Has
2 anything occurred since we last spoke which might affect your
3 ability to serve as a fair-minded juror in this matter?

4 ROBIN SCHLAEGEL: Since I was here the
5 last time my mother was in a severe car accident. Her
6 husband is blind and so I have been having to kind of go back
7 and forth between my home and her home to make sure that
8 everything is well. And she is starting now to be able to
9 drive but she's kind of fearful because it was a really bad
10 accident, so I don't know if I'm going to be needed. I don't
11 know how soon this is, like if it's at like -- I don't know
12 if I'm going to be needed to take her back and forth to
13 doctors or --

14 THE COURT: Well, we're hoping that this
15 may be starting Monday or Tuesday of next week.

16 ROBIN SCHLAEGEL: Uh-huh. That's the only
17 thing that has come --

18 THE COURT: Is there anyone else that's
19 able to help you cover that problem?

20 ROBIN SCHLAEGEL: There -- of my family
21 there's only my sister who lives in Toledo, so she's not
22 around here. And he does have some family around that may be
23 able to help with that.

1 THE COURT: Okay. Let me ask you these
2 other two questions. When you were last here many questions
3 were put to you by both sides. Do you presently have any
4 reason to change or amend your responses to those questions?

5 ROBIN SCHLAEGEL: No.

6 THE COURT: Is there any reason you are
7 unable to continue your service in this most important cause
8 which may last until the first week of June, other than what
9 you've just said?

10 ROBIN SCHLAEGEL: No, not really.

11 THE COURT: Okay. Fine. Please go back
12 downstairs. We're going to have you all back up here
13 shortly.

14 ROBIN SCHLAEGEL: Okay.

15 THE COURT: You're not to discuss anything
16 about what you were asked.

17 ROBIN SCHLAEGEL: Okay.

18 ATTY. BECKER: Thank you.

19 ATTY. JUHASZ: Thank you.

20 ATTY. INGRAM: Thanks.

21 ROBIN SCHLAEGEL: You're welcome.

22 (Whereupon, Robin Schlaegel was excused
23 from the courtroom and the proceedings commenced with the

1 next prospective juror as follows.)

2 PROSPECTIVE JUROR GARY S. PHILLIPS

3 THE COURT: Good afternoon, Gary.

4 GARY S. PHILLIPS: Hi.

5 THE COURT: Three questions.

6 GARY S. PHILLIPS: Okay.

7 THE COURT: Has anything occurred since we
8 last spoke which might affect your ability to serve as a
9 fair-minded juror in this matter?

10 GARY S. PHILLIPS: No, sir.

11 THE COURT: When you were last here many
12 questions were put to you by both sides. Do you presently
13 have any reason to change or amend any response that was
14 given?

15 GARY S. PHILLIPS: No, sir.

16 THE COURT: Is there any reason you are
17 unable to continue your service in this most important case
18 which may last until the first week of June?

19 GARY S. PHILLIPS: No, sir.

20 THE COURT: Okay. Very good. Please wait
21 back downstairs. We'll have you all up shortly here. Not to
22 discuss anything about why you were brought up.

23 GARY S. PHILLIPS: Okay.

1 THE COURT: Thank you.

2 GARY S. PHILLIPS: You're welcome.

3 ATTY. JUHASZ: Thanks.

4 (Whereupon, Gary S. Phillips was excused
5 from the courtroom and the proceedings commenced with the
6 next prospective juror as follows.)

7 PROSPECTIVE JUROR NATHAN CROCKER

8 THE COURT: Good afternoon.

9 NATHAN CROCKER: Good afternoon.

10 THE COURT: Three questions for you.

11 NATHAN CROCKER: Okay.

12 THE COURT: Has anything occurred since we
13 last spoke which might affect your ability to serve as a
14 fair-minded juror in this case?

15 NATHAN CROCKER: No.

16 THE COURT: When you were last here many
17 questions were put to you by both sides. Do you presently
18 have any reason to change or amend any of those responses?

19 NATHAN CROCKER: No.

20 THE COURT: Is there any reason you are
21 unable to continue your service in this most important case
22 which may last until the first week of June?

23 NATHAN CROCKER: It may last until the

1 first week of June?

2 THE COURT: Yeah.

3 NATHAN CROCKER: No, no problem.

4 THE COURT: Very good.

5 NATHAN CROCKER: Are things likely to be
6 over by June 12th or 13th?

7 THE COURT: If I have anything to do with
8 it. Okay. Please go back downstairs and wait and don't
9 discuss anything about why you were brought up here, okay?

10 NATHAN CROCKER: Okay.

11 THE COURT: Thank you.

12 ATTY. BECKER: Thank you very much.

13 ATTY. BAILEY: Thanks.

14 ATTY. JUHASZ: Thanks.

15 ATTY. INGRAM: Thank you.

16 (Whereupon, Nathan Crocker was excused
17 from the courtroom and the proceedings commenced with the
18 next prospective juror as follows.)

19 PROSPECTIVE JUROR CAROL K. SELAK

20 THE COURT: Ma'am, please have a seat up
21 here. Three questions for you, ma'am.

22 CAROL K. SELAK: Okay.

23 THE COURT: Has anything occurred since we

1 last spoke which might affect your ability to serve as a
2 fair-minded juror in this case?

3 CAROL K. SELAK: No.

4 THE COURT: When you were last here many
5 questions were put to you by both sides. Do you presently
6 have any reason to change or amend your responses?

7 CAROL K. SELAK: No.

8 THE COURT: Is there any reason you are
9 unable to continue your service in this most important case
10 which may last until the first week of June?

11 CAROL K. SELAK: No.

12 THE COURT: Okay. Very good. Please have
13 a seat back down there. We're going to have you all back up
14 shortly.

15 CAROL K. SELAK: Okay.

16 THE COURT: And not to discuss why you
17 were brought up, okay?

18 CAROL K. SELAK: Okay. Thank you.

19 ATTY. BECKER: Thank you.

20 ATTY. BAILEY: Thanks.

21 ATTY. JUHASZ: Thanks.

22 ATTY. INGRAM: Thank you.

23 (Whereupon, Carol K. Selak was excused

1 from the courtroom and the proceedings commenced with the
2 next prospective juror as follows.)

3 PROSPECTIVE JUROR AMY BARLETT

4 THE COURT: Amy, how are you? Three
5 questions for you.

6 AMY BARLETT: Okay.

7 THE COURT: Has anything occurred since we
8 last spoke which might affect your ability to serve as a
9 fair-minded juror?

10 AMY BARLETT: No.

11 THE COURT: When you were last here many
12 questions were put to you by both sides. Do you presently
13 have any reason to change or amend any of those responses?

14 AMY BARLETT: Nope.

15 THE COURT: Is there any reason you are
16 unable to continue your service in this most important case
17 which may last until the first week of June?

18 AMY BARLETT: No.

19 THE COURT: None? Okay. Very good.
20 Please have a seat back down there. We'll have you all up
21 later.

22 AMY BARLETT: Okay.

23 THE COURT: And not to discuss why you

1 were brought up.

2 AMY BARLETT: Okay.

3 THE COURT: Thank you.

4 AMY BARLETT: Thank you.

5 ATTY. BAILEY: Thanks.

6 ATTY. BECKER: Thank you.

7 ATTY. JUHASZ: Thanks.

8 ATTY. INGRAM: Thank you.

9 (Whereupon, Amy Barlett was excused from
10 the courtroom and the proceedings commenced with the next
11 prospective juror as follows.)

12 PROSPECTIVE JUROR VICTOR V. SABULSKY

13 THE COURT: Good afternoon. Have a seat.
14 How are you today?

15 VICTOR V. SABULSKY: Fine, thank you.

16 THE COURT: Good. Three questions for
17 you. Has anything occurred since we last spoke which might
18 affect your ability to serve as a fair-minded juror in this
19 matter?

20 VICTOR V. SABULSKY: No.

21 THE COURT: When you were here last many
22 questions were put to you by both sides. Do you presently
23 have any reason to change or amend your responses given?

1 VICTOR V. SABULSKY: No.

2 THE COURT: Is there any reason you are
3 unable to continue your service in this most important case
4 which may last until the first week of June?

5 VICTOR V. SABULSKY: No.

6 THE COURT: Okay. Very good. Please go
7 back downstairs and wait, we'll have you all up here shortly,
8 and not to discuss any reason why you were brought up here,
9 okay?

10 VICTOR V. SABULSKY: Okay.

11 THE COURT: Thank you.

12 ATTY. BECKER: Thank you.

13 ATTY. JUHASZ: Thanks.

14 ATTY. INGRAM: Thank you, sir.

15 (Whereupon, Victor V. Sabulsky was excused
16 from the courtroom and the proceedings commenced with the
17 next prospective juror as follows.)

18 PROSPECTIVE JUROR JUDITH M. ELLIOTT

19 THE COURT: Go ahead, have a seat right up
20 here, please. How are you doing today?

21 JUDITH M. ELLIOTT: Okay.

22 THE COURT: Good. Three questions for
23 you.

1 JUDITH M. ELLIOTT: Okay.

2 THE COURT: Has anything occurred since we
3 last spoke which might affect your ability to serve as a
4 fair-minded juror in this matter?

5 JUDITH M. ELLIOTT: Not that I can think
6 of.

7 THE COURT: When you were last here there
8 were many questions put to you by both sides. Do you
9 presently have any reason to change or amend your answers?

10 JUDITH M. ELLIOTT: No.

11 THE COURT: Is there any reason you are
12 unable to continue your service in this most important case
13 which may last until the first week of June?

14 JUDITH M. ELLIOTT: Not that I can see.

15 THE COURT: Very good. Please wait back
16 downstairs. We'll have you all up here shortly.

17 JUDITH M. ELLIOTT: Okay.

18 THE COURT: Not to discuss anything about
19 why you were brought up here.

20 JUDITH M. ELLIOTT: Right. Thank you.

21 THE COURT: Thank you.

22 ATTY. BAILEY: Thank you.

23 ATTY. JUHASZ: Thanks.

1 (Whereupon, Judith M. Elliott was excused
2 from the courtroom and the proceedings commenced with the
3 next prospective juror as follows.)

4 PROSPECTIVE JUROR SALINA M. SNYDER

5 THE COURT: Good afternoon to you.

6 SALINA M. SNYDER: Good afternoon.

7 THE COURT: Three questions for you.

8 SALINA M. SNYDER: Yes.

9 THE COURT: Has anything occurred since we
10 last spoke which might affect your ability to serve as a
11 fair-minded juror in this matter?

12 SALINA M. SNYDER: No.

13 THE COURT: When you were last here many
14 questions were put to you by both sides. Do you presently
15 have any reason to change or amend your answers given at that
16 time?

17 SALINA M. SNYDER: No.

18 THE COURT: Is there any reason you are
19 unable to continue your service in this most important case
20 which may last until the first week of June?

21 SALINA M. SNYDER: No.

22 THE COURT: Okay. Very good. Thank you.

23 SALINA M. SNYDER: Thank you.

1 THE COURT: Please wait back downstairs
2 and not to discuss anything --

3 SALINA M. SNYDER: Okay.

4 THE COURT: -- as to why you were up here.

5 SALINA M. SNYDER: Okay.

6 THE COURT: Thank you.

7 ATTY. INGRAM: Thank you.

8 ATTY. JUHASZ: Thank you.

9 ATTY. BECKER: Thank you.

10 (Whereupon, Salina M. Snyder was excused
11 from the courtroom and the proceedings commenced with the
12 next prospective juror as follows.)

13 PROSPECTIVE JUROR MARGARET E. FELLOWS

14 THE COURT: How are you this afternoon?

15 MARGARET E. FELLOWS: Fine, thank you.

16 THE COURT: Very good. Three questions
17 for you. Has anything occurred since we last spoke which
18 might affect your ability to be or to serve as a fair-minded
19 juror?

20 MARGARET E. FELLOWS: No.

21 THE COURT: When you were last here many
22 questions were put to you by both sides. Do you presently
23 have any reason to change or amend your responses to any

1 questions put to you?

2 MARGARET E. FELLOWS: No.

3 THE COURT: Is there any reason you are
4 unable to continue your service in this most important case
5 which may last until the first week of June?

6 MARGARET E. FELLOWS: No.

7 THE COURT: Okay. Very good. Thank you.
8 Please have a seat back downstairs, we'll bring you up later,
9 and not to discuss why you were brought up. Thank you.

10 MARGARET E. FELLOWS: (Nods head
11 affirmatively.)

12 ATTY. BECKER: Thank you.

13 ATTY. BAILEY: Thanks.

14 ATTY. JUHASZ: Thanks.

15 ATTY. INGRAM: Thank you, ma'am.

16 (Whereupon, Margaret E. Fellows was
17 excused from the courtroom and the proceedings commenced with
18 the next prospective juror as follows.)

19 PROSPECTIVE JUROR MARGARET L. KAY

20 THE COURT: How are you today, Margaret?

21 MARGARET L. KAY: Fine, thank you.

22 THE COURT: Three questions. Has anything
23 occurred since we last spoke which might affect your ability

1 to serve as a fair-minded juror in this case?

2 MARGARET L. KAY: No.

3 THE COURT: When you were last here there
4 were many questions put to you by both sides. Do you
5 presently have any reason to change or amend any response
6 given at that time?

7 MARGARET L. KAY: No.

8 THE COURT: Is there any reason you are
9 unable to continue your service in this most important case
10 which may last until the first week of June?

11 MARGARET L. KAY: No.

12 THE COURT: Okay. Very good. Thank you.
13 Please go back downstairs. We'll have you all up here
14 shortly. You are not to discuss anything about why you came
15 up, okay?

16 MARGARET L. KAY: Okay.

17 THE COURT: Thank you.

18 ATTY. BECKER: Thank you.

19 ATTY. BAILEY: Thanks.

20 ATTY. INGRAM: Thanks.

21 ATTY. JUHASZ: Thank you.

22 (Whereupon, Margaret L. Kay was excused
23 from the courtroom and the proceedings commenced with the

1 next prospective juror as follows.)

2 PROSPECTIVE JUROR ANDREW KOTWIS

3 THE COURT: Andy, have a seat up here,
4 please.

5 ATTY. INGRAM: How was your blood
6 pressure?

7 ANDREW KOTWIS: It was low.

8 THE COURT: Andy, I have three questions
9 for you here. Has anything occurred since we last spoke
10 which might affect your ability to serve as a fair-minded
11 juror in this matter?

12 ANDREW KOTWIS: No, sir.

13 THE COURT: When you were last here many
14 questions were put to you by both sides. Do you presently
15 have any reason to change or amend your response to any
16 question put to you?

17 ANDREW KOTWIS: No, sir.

18 THE COURT: Is there any reason you are
19 unable to continue your service in this most important case
20 which may last until the first week of June?

21 ANDREW KOTWIS: No, sir.

22 THE COURT: Okay. Very good. Please go
23 back downstairs. We'll have you all up here shortly. Not to

1 tell anybody why you were brought up here.

2 ANDREW KOTWIS: Okay.

3 ATTY. BAILEY: Thanks.

4 ATTY. BECKER: Thank you.

5 ATTY. INGRAM: Thank you.

6 (Whereupon, Andrew Kotwis was excused from
7 the courtroom and the proceedings commenced with the next
8 prospective juror as follows.)

9 PROSPECTIVE JUROR MICHAEL E. BLAKE

10 THE COURT: Good afternoon.

11 MICHAEL E. BLAKE: Good afternoon, Your
12 Honor.

13 THE COURT: Three questions. Has anything
14 occurred since we last spoke which might affect your ability
15 to serve as a fair-minded juror in this case?

16 MICHAEL E. BLAKE: No.

17 THE COURT: When you were last here many
18 questions were put to you by both sides. Do you presently
19 have any reason to change or amend your response to any
20 question put to you?

21 MICHAEL E. BLAKE: No, Your Honor.

22 THE COURT: Is there any reason you are
23 unable to continue your service in this most important case

1 which may last until the first week of June?

2 MICHAEL E. BLAKE: No, Your Honor.

3 THE COURT: Okay. Very good. Please have
4 a seat downstairs. We'll have you all up here shortly.

5 MICHAEL E. BLAKE: Okay.

6 THE COURT: Not to mention to anybody why
7 you came up.

8 ATTY. BAILEY: Thanks.

9 ATTY. BECKER: Thank you.

10 ATTY. JUHASZ: Thank you.

11 ATTY. INGRAM: Thank you.

12 (Whereupon, Michael E. Blake was excused
13 from the courtroom and the proceedings commenced with the
14 next prospective juror as follows.)

15 PROSPECTIVE JUROR DAVID R. RATCLIFFE

16 THE COURT: Good afternoon to you.

17 DAVID R. RATCLIFFE: Good afternoon.

18 THE COURT: Three questions. Has anything
19 occurred since we last spoke which might affect your ability
20 to serve as a fair-minded juror in this case?

21 DAVID P. RATCLIFFE: No.

22 THE COURT: When you were here last many
23 questions were put to you by both sides. Do you presently

1 have any reason to change or amend your responses to any
2 question put to you?

3 DAVID P. RATCLIFFE: No.

4 THE COURT: Is there any reason you are
5 unable to continue your service in this most important case
6 which may last until the first week of June?

7 DAVID P. RATCLIFFE: No.

8 THE COURT: Okay. Very good. Please
9 return downstairs. We are going to have you all back up here
10 shortly.

11 DAVID P. RATCLIFFE: Okay.

12 THE COURT: Thank you.

13 DAVID P. RATCLIFFE: Thank you.

14 ATTY. BECKER: Thank you.

15 ATTY. BAILEY: Thanks.

16 ATTY. JUHASZ: Thanks.

17 ATTY. INGRAM: Thank you.

18 (Whereupon, David P. Ratcliffe was excused
19 from the courtroom.)

20 THE COURT: Is there one that was missed?

21 THE BAILIFF: He's at domestic court until
22 3:00 o'clock.

23 ATTY. BAILEY: Yeah, he's in domestic

1 court.

2 THE COURT: Which one? Oh, that's the
3 one. What's his name?

4 THE BAILIFF: Davidson. Davidson, judge.

5 THE COURT: Davidson.

6 ATTY. BECKER: Do you want to take a break
7 until Davidson gets here?

8 ATTY. INGRAM: Well, let's take a break.
9 I have an idea that I need to discuss with Mr. Juhasz, and
10 after I discuss it with Mr. Juhasz I have to discuss it with
11 these gentlemen, and after I discuss it with them maybe we'll
12 discuss it with you.

13 THE COURT: Then you'll let me in on it.
14 Okay. Have at it.

15 (Whereupon, a brief recess was taken.)

16 PROSPECTIVE JUROR TODD DAVIDSON

17 THE COURT: You've been a busy man today.

18 TODD DAVIDSON: Oh.

19 THE COURT: Three questions for you. Has
20 anything occurred since we last spoke which might affect your
21 ability to serve as a fair-minded juror in this case?

22 TODD DAVIDSON: No.

23 THE COURT: Okay. When you were last here

1 many questions were put to you by both sides. Do you
2 presently have any reason to change or amend your response to
3 any question?

4 TODD DAVIDSON: No, not really.

5 THE COURT: Okay. Is there any reason you
6 are unable to continue your service -- I'm sorry. Any reason
7 you are unable to continue your service in this most
8 important case which may last until the first week of June?

9 TODD DAVIDSON: No.

10 THE COURT: None?

11 TODD DAVIDSON: (Shaking head negatively.)

12 THE COURT: Okay. Very good. If you'll
13 go back downstairs we're going to have you all back up here
14 shortly.

15 TODD DAVIDSON: Okay.

16 THE COURT: Thank you.

17 TODD DAVIDSON: Thank you.

18 ATTY. BECKER: Thank you.

19 ATTY. BAILEY: Thanks.

20 ATTY. BECKER: Hope everything went well
21 for you down there.

22 TODD DAVIDSON: Oh, yeah.

23 ATTY. INGRAM: Thanks.

1 ATTY. JUHASZ: Thank you.

2 ATTY. INGRAM: It's our fault. You told
3 us about it.

4 (Whereupon, Todd Davidson was excused from
5 the courtroom and a brief recess was taken.)

6 THE COURT: Do you want to put something
7 on the record at this point in time?

8 ATTY. BECKER: Yeah, why don't we put
9 something on the record, pick the regulars.

10 ATTY. BAILEY: The regular 12 jurors.

11 THE COURT: Mr. Juhasz actually has a
12 different perspective than I think of rest of under the
13 circumstances.

14 ATTY. JUHASZ: What a surprise.

15 ATTY. INGRAM: Go ahead, explain yourself.

16 ATTY. JUHASZ: Well, my concern is I heard
17 several of these jurors say this afternoon that they've got
18 things going on in their personal lives that have come up and
19 we've said, "Okay. Thanks a lot. Go back down to the jury
20 room." We got a lady who is going to be gone for two days
21 with her daughter having surgery, a lady who has got plans to
22 leave and go to Chicago for the weekend, a fellow who has got
23 problems at work.

1 I understand that we're all trying to get a jury and
2 we're probably all frustrated because it's taken us five
3 weeks to do it, but the bottom line is we may be cutting off
4 our nose to spite our face. These are questions where we'd
5 ask jurors in any other case and any other situation and say
6 are you not comfortable sitting on this jury because of
7 what's come up?

8 And I can envision a situation, and maybe nobody
9 else in the room agrees with me, that happens to me a lot,
10 but I can envision a situation where if we don't ask these
11 people and we just force them onto this jury and nobody
12 knocks them off with a peremptory challenge that, and I'm
13 just going to take her as an example, poor Mrs. Dicenso, as
14 it gets closer and closer to her daughter's surgery and her
15 maternal instincts get stronger and stronger, she's going to
16 say, "You know what? I'm sorry, I just can't serve on this
17 jury." And we have enough people here that with four
18 alternates that could potentially become a problem for a
19 mistrial.

20 THE COURT: Well, John, only you and I can
21 understand the feelings of a mother, but I agree with you. I
22 do not think it's a good idea to have anybody -- now, there
23 are some things that are inconvenient for people. The thing

1 with the mother, that's pretty basic I think. And to force
2 her to stay on the jury, you have at best a bad juror no
3 matter how nice a lady she is, and she's going to be
4 concerned about her daughter.

5 The guy with the work, I think that's something that
6 Jerry brings up a point. He should be asked more questions
7 about that. Maybe he's going to say it doesn't make any
8 difference, we still have a mess. But what are you proposing
9 then?

10 ATTY. JUHASZ: Well, from our notes,
11 judge, there are five of them. I can't imagine that's going
12 to take another 10 minutes or so. Let's just call them in
13 and ask them those kind of questions that we normally ask
14 those jurors. You know, maybe it's a problem and maybe it's
15 not. The fellow with the cousin coming in, you know, maybe
16 that's not a problem because of these days off. I don't
17 think we really left that fully answered with him.

18 THE COURT: Okay. Here's the only thing,
19 we reach 4:00 o'clock. I think that that's advisable that we
20 do that, we're going to nail down the ones that may be
21 potential problems. I would also suggest that maybe we
22 should take tomorrow and get more in the pool and then Monday
23 get everybody in here hell or high water, Monday morning at

1 10:00, and start this with our jury selection.

2 Now, the caveat is, the way we've been going, we
3 might spend all day tomorrow and get one or maybe two more,
4 but at least it's more of a cushion than we are going to have
5 otherwise.

6 ATTY. JUHASZ: I agree with that. And can
7 I just, and I haven't even thought this through, I'm just
8 sort of reacting to what you're saying. I don't think it
9 would take that long to do the peremptories today as we had
10 planned once we talk to these five people. And the only
11 reason I'm thinking about that, judge, is because I don't
12 know what they're going to do and we don't know what we're
13 going to do depending upon what they do as far as
14 peremptories. My point is if some get waived we may not be
15 in as dire straits at the end of the day as maybe we're
16 thinking right now.

17 THE COURT: Well, I'm not that good a
18 prognosticator and all I can say is you have to have a
19 certain -- you got certain numbers here we have to work with
20 and we're just pushing it awful close to the line. And --

21 ATTY. JUHASZ: No. I'm sorry, I don't
22 mean to interrupt you. I agree with that. But here's what
23 I'm saying is if everybody uses six we need 24 jurors to get

1 a panel of 12, and we need, we need eight more to get our
2 four alternates. But if they don't use all their
3 peremptories and we don't use all our peremptories, we may
4 have a bigger pool of potentials for peremptories.

5 THE COURT: But if we do it that way and
6 we run out of people, then we've got potentially a jury,
7 maybe you've gotten the jury seated but you don't have the --

8 ATTY. JUHASZ: Okay.

9 THE COURT: And you've got to send the
10 jury home and then we have to monkey around. I'd rather get
11 it all done first. I think that makes more sense. Now you
12 tell me.

13 ATTY. BAILEY: Judge, if I understand,
14 you're saying we should get the jury today?

15 ATTY. JUHASZ: No, that's not what he's
16 saying.

17 ATTY. BAILEY: What were you saying?

18 ATTY. JUHASZ: He's saying we could go
19 through, if I understand what he's saying, --

20 THE COURT: I'm saying we take the other
21 time we have today and bring these ones up that are potential
22 problems, question them, make a decision on each one, what
23 we're going to do. Spend tomorrow, have seven or eight more

1 | come in and go through this procedure and get more numbers in
2 | the pot.

3 ATTY. BAILEY: I was kind of hoping of
4 getting the basic jury of 12 today and then tomorrow we'll
5 get some more and then we would exercise the peremptories on
6 the alternates. That way at least we have a jury for sure
7 today and then we pick up whatever we need for the alternates
8 tomorrow. I think if we get two tomorrow --

9 THE COURT: Well, we're going to have to
10 keep the jury here past 4:30 because it's going to take at
11 least a half hour to go through these six people, five or six
12 people, at least.

13 ATTY. BAILEY: It shouldn't take that
14 long.

15 THE COURT: Okay. Let's try it that way.

16 Get the first one up, if you will, Gary.

17 CAPTAIN BACON: What's the name?

18 THE COURT: What's the name?

19 ATTY. INGRAM: The first one is
20 Carmichael.

21 ATTY. JUHASZ: The first one is
22 Carmichael.

23 THE COURT: Carmichael. This is not going

1 to take very long with him.

2 ATTY. INGRAM: Who are the other ones?

3 ATTY. BECKER: We're just doing the five?

4 ATTY. INGRAM: Carmichael, Black,
5 Patterson, Dicenso, Schlaegel. Those are the five.

6 THE COURT: Yeah, just have them all come
7 up and wait out there.

8 CAPTAIN BACON: Dicenso? I've got three
9 so far. Who else?

10 ATTY. INGRAM: Fifty-nine, Thomas
11 Carmichael.

12 ATTY. JUHASZ: Do you have Schlaegel,
13 Robin Schlaegel?

14 CAPTAIN BACON: No.

15 ATTY. JUHASZ: There's four.

16 CAPTAIN BACON: Five. Carmichael,
17 Dicenso. Kel, she won't answer the phone.

18 (Whereupon, a brief recess was taken.)

19 PROSPECTIVE JUROR THOMAS A. CARMICHAEL

20 THE COURT: Mr. Carmichael.

21 THOMAS A. CARMICHAEL: Yeah.

22 THE COURT: You expressed some concern
23 about -- I think on two different planes you had potential

1 problems.

2 THOMAS A. CARMICHAEL: Right.

3 THE COURT: With your cousin, as I
4 remember, and the second one was what?

5 THOMAS A. CARMICHAEL: A company picnic.

6 THE BAILIFF: No, that's not a problem.
7 That's not until June 21st.

8 THE COURT: Oh, okay. What is your view?
9 Would you rather not be on this jury or are you willing to
10 serve on the jury and take whatever inconvenience that may be
11 concerning the problem with or the fact your cousin is
12 coming? I'm assuming your cousin is going to have other
13 things to do besides just be with you. You tell me how
14 critical a thing this is.

15 THOMAS A. CARMICHAEL: Well, I don't get
16 to see him that often. I would like to spend as much time as
17 I can with him so I would, I would prefer not to be on the
18 jury.

19 THE COURT: Does the State have any brief
20 questions you wish to put or not?

21 ATTY. BAILEY: Mr. Carmichael, we expect
22 over the next three weeks we're going to be going for three
23 and a half days during each of those three weeks, I mean,

1 until the jury gets to the point where they're sequestered.
2 Your cousin is coming in on what day?

3 THOMAS A. CARMICHAEL: The 20th.

4 ATTY. BAILEY: The 20th, May 20th. Okay.
5 And today is the 8th. That's Memorial Day weekend or --

6 THOMAS A. CARMICHAEL: No. He'll be
7 here --

8 ATTY. INGRAM: That's before that.

9 THE COURT: Yeah.

10 CAPTAIN BACON: Here.

11 ATTY. BAILEY: Thanks. Okay. Today is --
12 if we start this trial about the 12th we would go for three
13 and a half days, and then the following week we would start
14 on a Tuesday. And he's coming in on Tuesday?

15 ATTY. BECKER: That Tuesday.

16 ATTY. BAILEY: That Tuesday, the 20th.
17 Okay. You'd be home in the evenings because court generally
18 goes from about 9:00 o'clock until about 4:30 or 5:00. And
19 we would -- there would be half a day Thursday that's off,
20 which is the court's regular day, and we would go through
21 Friday of that week. And then the following then you would
22 have off Saturday the 24th through the 26th, which is
23 Memorial Day, and then we would be back on the 27th.

1 THOMAS A. CARMICHAEL: I understand, but I
2 would still rather not be on it.

3 ATTY. BAILEY: Okay. Is there something
4 other than the fact that your cousin is coming in?

5 THOMAS A. CARMICHAEL: I just, I don't
6 think I'd be comfortable sitting here. I mean, I don't think
7 I would be comfortable sitting there, you know, watching
8 this.

9 THE COURT: You have second thoughts about
10 even being on the jury is what you're saying?

11 THOMAS A. CARMICHAEL: Yes.

12 ATTY. BAILEY: Would it affect one side or
13 the other?

14 THOMAS A. CARMICHAEL: I'm not sure. I
15 just, I don't think I would be paying attention to anything
16 that goes on in the court.

17 ATTY. BAILEY: Is there a reason for it?

18 THOMAS A. CARMICHAEL: I just, I -- if I'm
19 not moving around I just get sleepy. If I'm going to sit
20 here I'm going to get tired. I was down there napping
21 already because, you know, I just can't sit down for a while.

22 THE COURT: Do you have any questions?

23 ATTY. INGRAM: Yeah, I do. Your request

1 or your preference that you not be here and that you spend
2 time with your cousin, I'm sensing from you that that's a
3 pretty strong preference.

4 THOMAS A. CARMICHAEL: That is a
5 preference.

6 ATTY. INGRAM: And it's so strong of a
7 preference that if we say nay that you're going to be a
8 little miffed with us, is that it?

9 THOMAS A. CARMICHAEL: Yes.

10 ATTY. INGRAM: Okay. I thought so. I
11 have no further questions.

12 THE COURT: Any objection to dismissing
13 for cause?

14 ATTY. BAILEY: No objection, Your Honor.

15 ATTY. INGRAM: No.

16 THE COURT: Okay. You're excused,
17 Mr. Carmichael. Thank you very much.

18 (Whereupon, Thomas A. Carmichael was
19 dismissed from the pool of prospective jurors for cause.)

20 THE COURT: There's an example of
21 something that has changed. That's an excuse, not the reason
22 he doesn't want to sit on that jury.

23 ATTY. INGRAM: Off the record.

1 (Whereupon, a discussion was had off the
2 record.)

3 PROSPECTIVE JUROR LINDA J. BLACK

4 THE COURT: We meet again.

5 LINDA J. BLACK: Hi.

6 THE COURT: Linda, in asking you those few
7 questions before there was no other problem except your
8 animals, right, your dogs?

9 LINDA J. BLACK: Yes.

10 THE COURT: Now, we have to know whether
11 that's going to be something that is going to cause you a
12 problem to sit here. If you are able to -- you know, it's
13 important to both sides that we try to eliminate as many
14 potential things that might bother jurors because they have
15 to give their full attention to this, and none of us, I
16 believe, are really sure about where you stand in regard to
17 your dogs. Remember we talked about it before?

18 LINDA J. BLACK: Uh-huh.

19 THE COURT: And my impression was that it
20 was a concern for you and a bother but it wasn't any real
21 problem.

22 LINDA J. BLACK: The only concern would be
23 is when you're subpoenaed. I've been subpoenaed before on

1 the first trial I was on. They don't give you time to go
2 home. I can board them but -- that's not a problem -- but to
3 get them there. I just have two.

4 THE COURT: Well, I mean, like if you have
5 to be kept together overnight.

6 LINDA J. BLACK: Uh-huh.

7 THE COURT: Here's the way this has always
8 worked, every case I've seen. We all have an idea this is
9 the day that the jury is going to be kept together until they
10 get a decision. We always tell people the night before bring
11 your personal effects with you, you know, because --

12 LINDA J. BLACK: In case.

13 THE COURT: Now, sometimes it doesn't
14 happen on that day, it might occur the following day, but at
15 least we're pretty close on that part. Now, with that in
16 mind, you know, you have 24 hours advanced notice.

17 LINDA J. BLACK: That's not a problem. I
18 have someone who will keep them.

19 THE COURT: You do? Okay. So that would
20 not be a problem then for you to sit on this jury?

21 LINDA J. BLACK: No.

22 THE COURT: Okay. You're clear in your
23 mind on that then?

1 LINDA J. BLACK: Yes.

2 THE COURT: And there's no other reason
3 that you would not feel comfortable in sitting then?

4 LINDA J. BLACK: No.

5 THE COURT: Okay. Very good. Do you have
6 any questions or not?

7 ATTY. BAILEY: I just want to mention one
8 thing. If you have to board your dogs if you don't have
9 somebody available at that time, you could notify the kennel
10 like this week and say, "I'm going to be on a jury and I have
11 dogs and they need to be boarded, I don't know the exact
12 day," but they can make arrangements to keep it sort of
13 open-ended.

14 LINDA J. BLACK: Ahead of time.

15 ATTY. BAILEY: Because I have dogs and as
16 long as it's not the height of summer vacation or something
17 when everybody is traveling, generally they can generally get
18 them in, especially if you give them advance notice.

19 LINDA J. BLACK: Okay. I understand that.

20 THE COURT: Make prior arrangements,
21 that's a good idea.

22 LINDA J. BLACK: I understand that.

23 ATTY. BAILEY: And tell them you may have

1 to board them twice, okay?

2 LINDA J. BLACK: Okay.

3 THE COURT: Okay. Done?

4 ATTY. INGRAM: No questions.

5 THE COURT: Okay. Thank you.

6 (Whereupon, Linda J. Black was excused
7 from the courtroom and the proceedings commenced with the
8 next prospective juror as follows.)

9 PROSPECTIVE JUROR KEVIN B. PATTERSON

10 THE COURT: One thing that is of a concern
11 to us because we think there's a possible concern on your
12 part -- you know, the whole thing is to have as much as
13 possible people that don't have extraneous things that are
14 bothering them or worrying them.

15 KEVIN B. PATTERSON: Certainly.

16 THE COURT: And you mentioned your job.

17 KEVIN B. PATTERSON: Right.

18 THE COURT: I perceived your answer a
19 little bit differently than a couple of the other people
20 here. My impression -- well, you tell me. What -- if you
21 are required to be on this case is your job situation
22 something that you feel is going to cause you harm in some
23 way or some kind of harm to your employer that you would like

1 to avoid? You tell us, is that something that is --

2 KEVIN B. PATTERSON: The concern would be
3 that I would just get further and further behind and my
4 employer would get further behind. The work, the work is
5 going to keep coming whether I'm here or whether I'm there.

6 THE COURT: What type of work, I forget?

7 KEVIN B. PATTERSON: I do case work plus I
8 do evaluations --

9 THE COURT: Oh, yeah. Okay.

10 KEVIN B. PATTERSON: -- which I go out.
11 We cover all of Ohio so there's --

12 THE COURT: You work for the federal
13 government?

14 KEVIN B. PATTERSON: Yes. There's usually
15 six of us. There's four of us doing it now and --

16 THE COURT: They're not going to pick up
17 or transfer any other employee to take up the slack?

18 KEVIN B. PATTERSON: No, sir, there's no
19 chance of that. They have not been sending me stuff because
20 I'm on jury duty so they've, they've tried to do that.

21 THE COURT: Well, will that continue as
22 long as you're not there or does it pile up on you? Does it
23 pile up or will they send it --

1 KEVIN B. PATTERSON: It's going to pile up
2 no matter what, correct, it's going to pile up. They'll
3 continue to do it, I mean, we don't have a choice.

4 THE COURT: Well, then I have to leave
5 this up to you. We all appreciate that, you know, your job
6 is your livelihood and this, that and the other. You tell
7 us, do you wish to serve on this jury with that in mind or
8 would you rather not serve on this jury because of that?

9 KEVIN B. PATTERSON: Now, with that in
10 mind I would rather not serve. And that didn't happen --
11 what happened happened after I was up here.

12 THE COURT: And it would have happened in
13 any event while you -- if we had started the jury sooner you
14 would still have that on your mind?

15 KEVIN B. PATTERSON: Yes, sir. Yes, sir.

16 THE COURT: Well, any questions by the
17 State?

18 ATTY. BAILEY: One or two. Mr. Patterson,
19 I understand it's inconvenient, but if you were sick for
20 maybe three or four weeks because -- well, let me point out,
21 over the next three weeks we're only going to be in court for
22 three and a half days until you get into sequestration and
23 deliberations in the first phase.

1 KEVIN B. PATTERSON: Uh-huh.

2 ATTY. BAILEY: Okay. Because we've got
3 holidays and we've got other things that are scheduled.

4 KEVIN B. PATTERSON: Right.

5 ATTY. BAILEY: During that time you could
6 probably go to work on the days that you're not here, okay,
7 as long as you avoid any contact about talking about this
8 case.

9 KEVIN B. PATTERSON: Okay.

10 ATTY. BAILEY: Okay. So we would be going
11 next week. If we start on Monday we're going to go Monday,
12 Tuesday, Wednesday and half a day Thursday. Then we're going
13 to be off Friday, we're going to be off the following Monday,
14 and we'll go, the week of the 18th we're going to go Tuesday
15 the 20th, 21st, half a day on Thursday, and Friday the 23rd.
16 Okay.

17 Then you got Memorial Day weekend. We're going to
18 be off the 26th. Then we're going to have three and a half
19 days the next week. Okay. At that point you could be in
20 deliberations, somewhere around there. Will you be able to
21 pick up on some of the case work during those days?

22 And if it went to a second phase generally that
23 testimony, the proceedings last for generally one day. It

1 could last as many as three days, but generally it's one or
2 two.

3 KEVIN B. PATTERSON: Yeah, I would be able
4 to do that. I could go to work when I wasn't here, sure.

5 ATTY. BAILEY: Will you be able to work
6 around this schedule so that you would be able to sit on this
7 case? I understand that things may back up, but we all run
8 into that, and there are times when we may have to put some
9 extra work in. Will you still be able to concentrate on this
10 case and give it your full attention during that time and
11 then pick up some of your case load, you know, at work so you
12 would be able to serve in this case?

13 KEVIN B. PATTERSON: I think I could do
14 that if I had to, uh-huh.

15 ATTY. BAILEY: Okay. And it wouldn't
16 unduly affect you so that you would lose concentration here?

17 KEVIN B. PATTERSON: No.

18 ATTY. BAILEY: Okay. So you would be able
19 to serve?

20 THE COURT: You're comfortable with that?

21 KEVIN B. PATTERSON: Yeah. Yes, sir.

22 THE COURT: Okay. Any questions?

23 ATTY. INGRAM: Yes. I will adopt

1 Mr. Bailey's rules here, Your Honor. Mr. Carmichael, as I
2 understand your answer -- Mr. Patterson. I'm sorry.
3 Presently at your employment there are four employees doing
4 the work of six?

5 KEVIN B. PATTERSON: That's correct.

6 ATTY. INGRAM: And the duty assignments
7 are piling up because you're two short now, two employees
8 short, correct?

9 KEVIN B. PATTERSON: That's right.

10 ATTY. INGRAM: We take you away. That
11 means there's three employees doing the work of six.

12 KEVIN B. PATTERSON: That would be
13 correct.

14 ATTY. INGRAM: And your duty assignments,
15 they're not assignments where you just go into the office,
16 there's a sheet of paper on the desk and everybody can come
17 to you and you can get everything done in the office, you got
18 to get in the car and you got to drive, sometimes you have to
19 stay, and it takes some time, am I correct?

20 KEVIN B. PATTERSON: Yeah. I'm an
21 out-stationed employee, right.

22 ATTY. INGRAM: Which means that scheduling
23 pot luck is sort of a problem for you?

1 KEVIN B. PATTERSON: I have an area from
2 Painesville to Mansfield to Marietta and everything in
3 between in the State, so when things happen in that area I
4 handle them.

5 ATTY. INGRAM: And if you have to go down
6 to Marietta and you can spend time down there you can
7 schedule things in a block, whereas if you're only in the
8 office for one day --

9 KEVIN B. PATTERSON: That's true.

10 ATTY. INGRAM: -- your scheduling is far
11 more of a problem.

12 KEVIN B. PATTERSON: That's true, correct.
13 Right.

14 ATTY. INGRAM: In light of all of that, if
15 you feel that it's a hardship upon you and your employer,
16 just let us know.

17 KEVIN B. PATTERSON: I think it is
18 probably a hardship to a certain extent, yes.

19 ATTY. INGRAM: And it is something that no
20 matter how hard you try not to worry about it, in the back of
21 your mind you might be a bit concerned about the work piling
22 up at the office?

23 KEVIN B. PATTERSON: I guess that might

1 happen. Yeah, I would try not to think about it, but it
2 could happen, sure.

3 ATTY. INGRAM: All right. I have no
4 further questions, and I have no objection to Mr. Patterson
5 being excused.

6 THE COURT: Okay. I will ask you this,
7 Mr. Patterson. In light of the two styles of questioning
8 here, the one sympathetic more so than the other.

9 KEVIN B. PATTERSON: Right.

10 THE COURT: What do you wish to do? And
11 we will be comfortable with whatever your decision is. We
12 would like to have you sit on this jury, but you're the guy
13 that has to answer that.

14 KEVIN B. PATTERSON: Yeah, I would rather
15 be dismissed honestly to do the work, to do my work.

16 THE COURT: You would like to stay? I'm
17 sorry?

18 COURT REPORTER: To be dismissed, judge.

19 THE COURT: To be dismissed?

20 KEVIN B. PATTERSON: To do the work.

21 THE COURT: Well, the federal government
22 should pay you more than you're getting paid, I'll tell you
23 that.

1 KEVIN B. PATTERSON: Well, they do, but --

2 THE COURT: Well, any objection to
3 dismissing for cause?

4 ATTY. INGRAM: None from the defense. I
5 can't speak for Mr. Bailey.

6 THE COURT: The State?

7 ATTY. BAILEY: We reluctantly will let him
8 go.

9 THE COURT: Okay. Thank you very much.
10 Good luck to you.

11 KEVIN B. PATTERSON: Thank you, and I
12 apologize.

13 THE COURT: That's no problem. Things
14 come up, we understand. Thanks for participating, though.

15 ATTY. BAILEY: Thanks.

16 ATTY. INGRAM: Thank you.

17 ATTY. JUHASZ: Good luck.

18 (Whereupon, Kevin B. Patterson was
19 dismissed from the pool of prospective jurors for cause and
20 the proceedings continued with the next prospective juror as
21 follows.)

22 PROSPECTIVE JUROR MOSELLE DICENSO

23 THE COURT: What would your reaction be if

1 I tell you you have to stay?

2 MOSELLE DICENSO: I wouldn't be happy.

3 THE COURT: Wouldn't be happy.

4 MOSELLE DICENSO: She's never had anything
5 like this before.

6 THE COURT: Well, we've talked about this,
7 and none of us happen to be mothers but we all have mothers
8 and we know how mothers worry about things. If I understood
9 correctly, you have two days for sure that you're going to be
10 gone?

11 MOSELLE DICENSO: Right.

12 THE COURT: And it could be more than
13 that?

14 MOSELLE DICENSO: I don't think so.

15 THE COURT: You don't think so.

16 MOSELLE DICENSO: I mean, we could come
17 back on Wednesday, she's coming home with us, but I just
18 don't know if the doctor would want her to leave the hospital
19 and get in the car.

20 THE COURT: Right. I understand.

21 Mr. Bailey, do you have any questions you wish to ask?

22 ATTY. BAILEY: If I understand, you're
23 leaving May 27th?

1 MOSELLE DICENSO: Yes.

2 ATTY. BAILEY: Okay. That's right after
3 Memorial Day.

4 MOSELLE DICENSO: In the evening though.

5 ATTY. BAILEY: And we expect we're going
6 to be concluding this trial that week. So you would be
7 leaving what time in the evening?

8 MOSELLE DICENSO: 6:00 o'clock after my
9 husband gets home from work.

10 ATTY. BAILEY: So if this case --

11 MOSELLE DICENSO: I have to be there by
12 7:00 in the morning.

13 ATTY. BAILEY: By 7:00 in the morning on
14 the 28th. And what time would you be back on the 29th?

15 THE COURT: In the evening sometime?

16 MOSELLE DICENSO: We'll probably get up --
17 no. We'll probably get up and come home on the, let's see,
18 29th, yeah.

19 ATTY. BAILEY: You're coming back from
20 Columbus so you wouldn't get here until the afternoon
21 sometime?

22 MOSELLE DICENSO: Probably, yeah.

23 ATTY. BAILEY: Okay. So you'd be missing

1 two days and that would be probably at the end of our trial,
2 maybe the beginning of sequestration. If you couldn't go
3 down there, if you were to sit on this jury and we told you
4 you couldn't go down there, how would you feel?

5 MOSELLE DICENSO: I want to go.

6 ATTY. BAILEY: Well, let me ask you, do
7 you think that knowing your daughter was undergoing some
8 surgery and hoping everything came out right, but you never
9 can tell about complications, would that distract your
10 ability to concentrate on the evidence here, especially if
11 you got sequestered and you wouldn't be able to have any
12 contact with anybody else?

13 MOSELLE DICENSO: I would imagine it
14 would. I mean, I've never --

15 ATTY. BAILEY: You think it would. And
16 it's difficult to ask but that's a possibility. I mean, you
17 could be in sequestration at that point, deliberations.

18 MOSELLE DICENSO: So if it --

19 ATTY. BAILEY: You're the only one who
20 knows yourself, I mean, if that's going to cause you an undo
21 hardship, knowing that your daughter is undergoing surgery.
22 You made plans to be there with her and she's expecting you
23 to be there and your husband is expecting you to be there?

1 MOSELLE DICENSO: (Nods head
2 affirmatively.)

3 ATTY. BAILEY: Okay. Are you telling us
4 you would rather not serve on this particular jury because of
5 that?

6 MOSELLE DICENSO: I would rather be with
7 her.

8 ATTY. BAILEY: Okay.

9 THE COURT: Quite clearly this lady would
10 not be comfortable with staying on the jury in light of your
11 daughter, you know, going through the operation. Any
12 objection to me dismissing for cause?

13 ATTY. JUHASZ: None from us.

14 ATTY. BAILEY: Not from the State, Your
15 Honor.

16 THE COURT: Thank you.

17 MOSELLE DICENSO: Okay. Thank you.

18 THE COURT: Good luck. Hope everything
19 works out for your daughter okay.

20 ATTY. BECKER: Take care. Thank you.

21 ATTY. BAILEY: Thanks.

22 ATTY. JUHASZ: Thank you. Good luck with
23 everything.

1 (Whereupon, Moselle Dicenso was dismissed
2 from the pool of prospective jurors for cause.)

3 ATTY. JUHASZ: I apologize when I said
4 this would only take 10 minutes.

5 THE COURT: Are there more?

6 ATTY. BECKER: Yes.

7 PROSPECTIVE JUROR ROBIN SCHLAEGEL

8 THE COURT: Okay. I have to admit I
9 forgot what the problem was with you, what you had.

10 ROBIN SCHLAEGEL: My mother, she had been
11 in an accident.

12 THE COURT: Oh, yeah, yeah, yeah. Your
13 stepfather. Here again, we don't wish to impose on anybody
14 to effect, you know -- and whoever sits on this jury should
15 be as free as possible from any outside worries. You
16 mentioned that there were other members of the family.

17 ROBIN SCHLAEGEL: Uh-huh.

18 THE COURT: You have to tell us whether
19 that's workable for you or whether that's going to be
20 something on your mind, whether if you have a choice you
21 would opt to not be on the trial or whether you could deal
22 with all those situations and feel comfortable in sitting
23 here.

1 ROBIN SCHLAEGEL: Uh-huh.

2 THE COURT: So you tell us what your
3 thoughts are on the matter.

4 ROBIN SCHLAEGEL: There are other people
5 that could help. I guess just because they're mainly his
6 family I feel more of a responsibility because it's my mom
7 and this is her second marriage; it's not, you know, the
8 first one, so. She has come a long way. She is starting to
9 drive again. She may go back to work next week. You know,
10 it was just more or less one of those things that --

11 THE COURT: Is she -- she's able to care
12 for your stepfather most of the time?

13 ROBIN SCHLAEGEL: Right.

14 THE COURT: But not like she could before?

15 ROBIN SCHLAEGEL: Correct.

16 THE COURT: But is there someone else that
17 you would feel comfortable with being able to help both of
18 them?

19 ROBIN SCHLAEGEL: Yeah. He has, he has
20 brothers and sisters. He has like eight or nine.

21 THE COURT: Are they pretty good with
22 responding?

23 ROBIN SCHLAEGEL: Yes. Uh-huh.

1 THE COURT: Well, the decision really at
2 this point I'm going to leave up to you, whether you're
3 willing to serve on the jury, keeping everything in mind, or
4 whether you would ask to be excused or not.

5 ROBIN SCHLAEGEL: Okay. At this point,
6 just because I'm unsure of how she would be, you know, I
7 think I probably should not be just because I need to, I need
8 to be available.

9 THE COURT: Okay. Mr. Bailey, do you have
10 any questions? Or Mr. Becker? I keep calling on Mr. Bailey
11 but --

12 ATTY. BAILEY: Mrs. Schlaegel.

13 ROBIN SCHLAEGEL: Yes.

14 ATTY. BAILEY: Let me put it this way,
15 okay? We're going to be here, we expect, over the next three
16 weeks in the first phase, okay, but we're going to start,
17 assuming we start next Monday, we're only going to go three
18 and a half days a week. Okay. Next week we're going to go
19 Monday the 12th, the 13th, the 14th, and half the day on
20 Thursday the 15th. Okay. We're off Friday the 16th and off
21 the 19th, which is the following Monday.

22 Then we pick up for three and a half days, Tuesday,
23 Wednesday, half a day Thursday, and Friday the 23rd. Then

1 we're off again and it's Memorial Day weekend and we're off
2 that Monday, and then we would go Tuesday and Wednesday and
3 half a day Thursday. At that point I expect we're probably
4 going to be towards the very end of the case, I would expect,
5 and in deliberations sometime toward the end of that week.
6 During the time that you're not in court in this trial until
7 the point where you are sequestered you can --

8 ROBIN SCHLAEGEL: Right.

9 ATTY. BAILEY: Your mom is where, she's
10 nearby or --

11 ROBIN SCHLAEGEL: Yeah. She just lives in
12 Champion.

13 ATTY. BAILEY: Okay. So you would be able
14 to visit your mom every night during that time?

15 ROBIN SCHLAEGEL: Yeah.

16 ATTY. BAILEY: And you will be able to see
17 her, you'll be able to be with her all those times here that
18 we're not in court?

19 ROBIN SCHLAEGEL: Correct.

20 ATTY. BAILEY: As long as you don't talk
21 about this case.

22 ROBIN SCHLAEGEL: Sure.

23 ATTY. BAILEY: Okay. Or read the paper

1 about the case or anything. The only time you wouldn't be
2 able to do anything is if you're sequestered.

3 ROBIN SCHLAEGEL: Right.

4 ATTY. BAILEY: And that could be --

5 ROBIN SCHLAEGEL: Right. That's a ways
6 away.

7 ATTY. BAILEY: We don't know, it could be
8 a day, it could be a couple days or something.

9 ROBIN SCHLAEGEL: Okay.

10 ATTY. BAILEY: And then the second phase
11 generally would be a couple days or a week later and that
12 generally is like one day, maybe at most three days.

13 ROBIN SCHLAEGEL: Uh-huh.

14 ATTY. BAILEY: Generally maybe two days.
15 And then deliberations with sequestration. Do you think you
16 can work around that?

17 ROBIN SCHLAEGEL: Yes. I didn't realize
18 that it would only be -- I was thinking it would be like all
19 week long. So if there were days -- if I knew the schedule
20 ahead of time and that she had doctor's appointments, I could
21 work around that, so yes, that would be okay.

22 ATTY. BAILEY: So knowing the schedule you
23 think you would be much more comfortable?

1 ROBIN SCHLAEGEL: Yes.

2 ATTY. BAILEY: And you would still be able
3 to concentrate on the evidence?

4 ROBIN SCHLAEGEL: Yes, right.

5 ATTY. BAILEY: And still be able to sit as
6 a juror in this case?

7 ROBIN SCHLAEGEL: Yes, since I know that
8 now.

9 THE COURT: Would it cause you any concern
10 now because when you're sequestered you can't phone your mom
11 or anything?

12 ROBIN SCHLAEGEL: No. That would be fine.

13 THE COURT: That would be okay?

14 ROBIN SCHLAEGEL: Uh-huh.

15 ATTY. JUHASZ: Hi.

16 ROBIN SCHLAEGEL: Hi.

17 ATTY. JUHASZ: We want to make sure you're
18 comfortable serving on this jury.

19 ROBIN SCHLAEGEL: Uh-huh.

20 ATTY. JUHASZ: If I remember, Mr. Ingram
21 is the one who I think asked you questions before when you
22 were in here, but if I remember, you are kind of busy at work
23 too, right?

1 ROBIN SCHLAEGEL: Correct.

2 ATTY. JUHASZ: Okay. Now you got this
3 thing with your mom.

4 ROBIN SCHLAEGEL: Uh-huh.

5 ATTY. JUHASZ: And now you got not just
6 some case but you've got a death penalty case.

7 ROBIN SCHLAEGEL: Uh-huh.

8 ATTY. JUHASZ: All right. That's a lot
9 going on. I'm not trying to talk you out of serving, but
10 understand that we want people who can give their full
11 attention.

12 ROBIN SCHLAEGEL: Uh-huh.

13 ATTY. JUHASZ: Okay. And honestly, if you
14 were sitting over there or somebody you cared about were
15 sitting over there, you wouldn't want jurors who are thinking
16 about other things. That seems fair, right?

17 ROBIN SCHLAEGEL: Correct.

18 ATTY. JUHASZ: Okay. I can't suggest to
19 you that you are or you're not, it's just that over the
20 course of hearing you today and the other day when you were
21 in here it seems to me you have a lot going on, and earlier
22 you told the judge that you wouldn't be comfortable because
23 of these other things going on.

1 ROBIN SCHLAEGEL: Correct.

2 ATTY. JUHASZ: Sometimes I think that
3 people, especially people like you, and I remember some of
4 your answers from before, you are taken with and impressed
5 with the civic responsibility of serving as a juror.

6 ROBIN SCHLAEGEL: Uh-huh.

7 ATTY. JUHASZ: And we appreciate that.
8 But I need you to understand that we call in lots of people
9 because we don't make everybody who comes in here serve on
10 jury duty. That's why we ask folks these questions because,
11 you know, a lot of times we put it to them in terms of would
12 you be comfortable serving on another jury at another time
13 because of things going on in your life?

14 ROBIN SCHLAEGEL: Uh-huh.

15 ATTY. JUHASZ: And really that's kind of
16 what this boils down to and that's a question only you can
17 answer. Nobody is going to yell at you if you say "I'm not
18 comfortable serving on this jury because of things going on
19 in my life." We'll get somebody else. And I'm not trying to
20 give you short shrift on that.

21 ROBIN SCHLAEGEL: Right.

22 ATTY. JUHASZ: But you understand where
23 I'm coming from?

1 ROBIN SCHLAEGEL: Uh-huh.

2 ATTY. JUHASZ: Okay. You struck me
3 earlier when you were talking about your mom as it was a
4 serious accident and you're kind of worried about her.

5 ROBIN SCHLAEGEL: Uh-huh.

6 ATTY. JUHASZ: That's also understandable.
7 So now taking all those things together, you tell us. We'll
8 take whatever your answer is. Is this something that you
9 think you can do or are you just doing that out of this
10 driving sense of civic responsibility when really you're
11 saying, "Geez, oh, man, things are crazy at work. Now this
12 stuff with my mom, and on top of that they're going to pile
13 onto me the pressure of deciding a capital murder case." Are
14 you more comfortable serving on this jury or are you more
15 comfortable saying, "You know what? I hope you call me for
16 jury duty some other time when I don't have these things
17 going on in my life"?

18 ROBIN SCHLAEGEL: The only real difficulty
19 as far as work goes, that is something that my daughter can
20 either give to me in the evening, or now that I know too that
21 I wouldn't be here every day, those are things that I can do
22 aside from that. And then too, as I said, my mom is doing
23 better, but I didn't know, you know, you don't know.

1 ATTY. JUHASZ: Sure.

2 ROBIN SCHLAEGEL: So --

3 ATTY. JUHASZ: And there's some
4 uncertainty there?

5 ROBIN SCHLAEGEL: Right, there is that
6 uncertainty, so.

7 ATTY. JUHASZ: And I guess what causes me
8 some concern is if we start hearing evidence next week, okay?

9 ROBIN SCHLAEGEL: Uh-huh.

10 ATTY. JUHASZ: Next week there's still
11 some uncertainty with your mom?

12 ROBIN SCHLAEGEL: She's planning on going
13 back to work on Monday.

14 ATTY. JUHASZ: Okay. All right. Then let
15 me just kind of boil it down to what I said before. You tell
16 us, is this a situation where you say, "I'm just not
17 comfortable serving on this jury because of everything going
18 on in my life," or is it a situation where you say, "I can do
19 this"?

20 ROBIN SCHLAEGEL: I think, umm, I think to
21 be fair for everybody it probably would be better that I am
22 not.

23 ATTY. JUHASZ: Okay.

1 ROBIN SCHLAEGEL: Just, just so that my
2 mind would be where it needs to be.

3 ATTY. JUHASZ: Okay. I appreciate that.
4 Thank you.

5 THE COURT: Any objection for dismissing
6 for cause?

7 ATTY. BECKER: Yeah, Your Honor. I mean,
8 with all -- can we approach side bar?

9 (Whereupon, a bench conference was held.)

10 THE COURT: We'll put side bar here when
11 we're done.

12 Ma'am, you're excused. We thank you for
13 participating, okay?

14 ROBIN SCHLAEGEL: Okay.

15 THE COURT: Good luck to you.

16 ROBIN SCHLAEGEL: Thank you.

17 ATTY. BAILEY: Thanks.

18 ATTY. BECKER: Thank you.

19 ATTY. JUHASZ: Good luck.

20 ATTY. INGRAM: Thank you.

21 (Whereupon, Robin Schlaegel was dismissed
22 from the pool of prospective jurors for cause.)

23 THE COURT: For the record, the side bar

1 was a discussion. The State objects to the Court's decision
2 of dismissing for cause. The Court is not comfortable with
3 that lady sitting. No one can foresee the future. True, we
4 have alternates, but there may be other things come up with a
5 trial of this length where alternates may be necessary. This
6 woman, if her mother became ill or something, we're just
7 asking for problems that can be avoided by not having her on
8 the thing, so I've overruled the Court -- or the State's
9 objection.

10 Now, we're going to get them up and you're going to,
11 without any further ado, exercise your challenges, is that
12 correct?

13 ATTY. BAILEY: I believe so, Your Honor.

14 ATTY. INGRAM: Can you give us like five,
15 10 minutes to get a seating chart together?

16 ATTY. BAILEY: We have to do our seating
17 chart.

18 THE COURT: Now, once we have the jury I
19 will give them the admonition, Laurie will swear them in, and
20 we'll leave them go today. Now, what about tomorrow? What
21 are we proposing for tomorrow?

22 ATTY. INGRAM: I thought we were going to
23 draw voir dire alternates if we need to and then we're going

1 to start the trial on Monday, so you will tell the 12 to --

2 THE COURT: Well, that's assuming that we
3 have 12 on the jury and we usually get four for alternates.
4 That's where I think you're going to run shy on this.

5 ATTY. INGRAM: Why don't we have them call
6 tomorrow afternoon?

7 COURT REPORTER: There's like eight people
8 coming tomorrow morning, or tomorrow during the day. Have
9 this group tonight that actually gets picked call tomorrow
10 night.

11 ATTY. INGRAM: Right. And then we'll give
12 them the weekend because tomorrow is Friday, right. That
13 gives them the weekend to get ready for Monday, or Tuesday at
14 the latest, but hopefully Monday.

15 THE COURT: Yeah. But the thing is, if we
16 get, if we go through more individuals tomorrow, right, we're
17 going to run into similar problems here. There's a time
18 element here that I'm saying, that to tell them Friday night
19 to be back here Monday -- well, maybe we just have to see
20 where we're at.

21 COURT REPORTER: Yeah, I think we need to
22 see.

23 THE COURT: Let's get the jury, get them

1 up, exercise your peremptories, and I have to read them a few
2 things here before we start this.

3 ATTY. BAILEY: We've lost six.

4 THE COURT: Huh?

5 ATTY. BAILEY: We've lost six. We're back
6 down to 26 people on the panel.

7 THE COURT: Twenty-six.

8 ATTY. BAILEY: Well, we need 24 for the
9 jury, but for the alternates we're going to need probably
10 another --

11 THE COURT: That's assuming you all
12 exercise your six preempts.

13 (Whereupon, a discussion was had off the
14 record.)

15 THE COURT: Now, there's another thing
16 that I don't want to forget about here. This motion for
17 change of venue is still hanging out there in the bushes
18 somewhere.

19 ATTY. BECKER: It won't go anywhere.

20 ATTY. JUHASZ: You're not asking me to
21 withdraw it, are you?

22 THE COURT: I think -- let me ask, is
23 there any -- because I don't want to swear this jury in until

1 that is ruled on.

2 ATTY. BAILEY: Okay.

3 THE COURT: And I'm asking if you're going
4 to require argument before I rule on that matter?

5 ATTY. JUHASZ: No.

6 ATTY. INGRAM: No.

7 THE COURT: You are not?

8 ATTY. INGRAM: No.

9 THE COURT: You'll let the record speak
10 for itself?

11 ATTY. JUHASZ: Yes, sir.

12 THE COURT: Okay. Let me address that at
13 this point in time then. We've gone through a long, some may
14 say a belabored process here of picking a jury. The question
15 up front was because of the fact that there was another trial
16 on the same facts and the publication that was generated due
17 to the set of facts in this case on the prior case and this
18 case, whether or not a change of venue was appropriate.
19 I've taken that matter under advisement until we reached this
20 point.

21 It's my conclusion that there are many people on
22 this jury that I was convinced did not know anything about
23 the trial. There are some who knew something about the trial

1 and some who knew quite a bit about the trial. I think those
2 who knew an inordinate amount or a lot about the trial have
3 been dismissed up to this point. Those who have had some
4 smattering of knowledge or some knowledge about the case have
5 been passed up to this point. And I think that counsel has
6 been very assiduous in their questioning on this issue.

7 The defense has also tried to find out if there was
8 a lot of gabbing going on that first day before I talked to
9 this prospective bunch of jurors about discussions of
10 pretrial publicity, and the only thing that came out of any
11 of that was apparently there were two people that mentioned
12 something about they were aware of what this case probably
13 was about. That the person that gave that information I
14 think was ultimately not chosen here. In any event,
15 whichever way that was, she was not prejudiced by it
16 according to her testimony, so the Court feels very
17 comfortable that this case can be fairly tried in this county
18 and that a change of venue is not proper.

19 Now, anything that anybody wishes to place on the
20 record? Your objection is noted from the defense as
21 continuing. Okay?

22 ATTY. JUHASZ: Very well. Thank you.

23 ATTY. BAILEY: Thanks, Your Honor.

1 THE COURT: I need a judgment entry on
2 that, too. I need those other judgment entries.

3 ATTY. BECKER: Oh, you know what? You
4 mentioned that and I will get those. I will work on those,
5 finish those up tonight hopefully, probably.

6 THE COURT: Okay. Because technically
7 those should be filed before the trial starts.

8 ATTY. BECKER: Yes, and I will work on
9 those tonight, Your Honor.

10 THE COURT: Okay. Get these folks up here
11 and let's see what we've got.

12 (Whereupon, a discussion was had off the
13 record.)

14 THE COURT: Does everybody agree on that,
15 there's no special oath anymore to be given to the jury on a
16 capital case, just the standard oath?

17 ATTY. BECKER: Yes, standard.

18 ATTY. JUHASZ: Yes.

19 THE COURT: Motion overruled on change of
20 venue.

21 (Whereupon, all members of the prospective
22 jury pool were seated in the courtroom and the following
23 proceedings commenced.)

1 THE COURT: Okay, everybody, be seated.
2 Thank you. Okay. Members of the jury, you are the chosen
3 few that we've arrived at after a very arduous four or five,
4 going into the fifth week here. This type of case because of
5 its seriousness, we have to go through all of these different
6 things that you participated in and what everybody else in
7 the prospective pool has participated in. Some of you went
8 through very extensive questioning, some of you not so much,
9 but it's the way the whole system is set up, and we
10 appreciate your patience and your attitude throughout this.

11 I'm sorry to keep you late this afternoon, but this
12 is the time to try to get our jury seated. We've narrowed it
13 down. The more time that goes on the more of you may have
14 things come up which would make it difficult or impossible
15 for you to sit. That happens in every case when you have a
16 long period of time. That's one of the reasons we will have
17 alternates during this case.

18 Now, you've all gone through this process and
19 there's just a couple things that I want to review with you
20 before we actually start selecting the jury. This concept of
21 beyond a reasonable doubt is something that you will hear
22 repeated throughout the trial. I will give you a closing
23 instruction at the end. I bring this up because some of you

1 have sat on civil trials. Many times attorneys in trying to
2 explain this to the jury use the example if you look up on
3 our courthouse when you come in in the morning there are four
4 beautiful ladies depicted up there and they're each holding a
5 balance of justice. Now, the symbol of that balance means,
6 and it's very important, the concept that evidence is always
7 weighed in every case. Whether it's a civil or a criminal
8 case, you have to weigh the evidence.

9 In a civil case the Court will instruct that the
10 jury in starting out has to visualize that balance as being
11 an equal pose. It's perfectly balanced. There are no
12 presumptions either way. And for a civil plaintiff to win
13 they have to put enough weight on there merely to tip it in
14 their favor.

15 But the criminal law requires a burden of proof
16 known as beyond a reasonable doubt and that means that you
17 have to visualize that scale of justice as being at the
18 beginning of the trial very much out of balance because we
19 have the presumption of innocence, the right to remain
20 silent, and we have the burden of proof known as beyond a
21 reasonable doubt. So during the course of the trial the
22 State has to put enough evidence on their side not just to
23 get above like they do in a preponderance of a civil case,

1 and not by clear and convincing evidence, which is another
2 standard in civil law, but beyond a reasonable doubt. And,
3 as all of you were informed, that's not beyond all doubt but
4 beyond a reasonable doubt, and each of you have to set
5 exactly where that mark is.

6 I think you've all been examined on that, but it's
7 most important that you understand that that is the burden of
8 proof that will be applied in this case.

9 Another fact is, I mentioned to you this at the
10 beginning and it's important, the fact that a defendant is in
11 court on trial where the charges have been made against her
12 is no evidence whatsoever of that person's guilt. The jurors
13 are to consider only evidence properly received in this
14 courtroom in determining the question of guilt or innocence
15 of the defendant.

16 This defendant has been arraigned on the indictment,
17 has entered a plea of not guilty, which is a complete denial
18 of all charges, making it necessary for the prosecution
19 acting through these gentlemen to my left to prove beyond a
20 reasonable doubt the case that they allege against the
21 defendant. Until and unless that is done by the State, the
22 presumption of innocence covers that table.

23 Okay. I am going to ask all prospective jurors to

1 please stand -- no, wait a minute. That's not necessary.
2 You've already been sworn. I apologize. We will now start
3 the selection of the jury.

4 Now, ordinarily, ladies and gentlemen, we'll bring a
5 prospective jury in, we'll put 12 people in the box, we go
6 through a bunch of questions. That has all been done
7 individually in this case. These folks have had every
8 opportunity to ask you every question they wanted to ask you
9 and they're comfortable with you sitting on this jury up to
10 this point. They have an opportunity at this point to
11 exercise on each side what we call peremptory challenges.
12 Those are -- there are two types of challenges. Challenge
13 for cause, we've exercised a lot of those. We've gone
14 through 60 some people or more. Many of them were excused
15 for cause. That means there was something that would not
16 enable them to sit and be a fair and impartial juror. They
17 still have the right to challenge for cause, but I don't
18 think there's any of those left because they know too much
19 about you at this point where any of those would be valid.
20 Something might come up. But they have the right to exercise
21 a peremptory challenge.

22 Now, for challenge for cause they have to give a
23 reason, but for a peremptory challenge they need give no

1 reason and it wouldn't be proper for me to ask them why.
2 It's just a right that both sides have. They have six each.

3 If any of you should be excused, and some of you
4 undoubtedly will be, you should not ask yourself why, did I
5 answer something wrong? No. Because, quite simply, you've
6 probably done everything the way we asked you to do it, and
7 that was to be truthful about your answers. Just because you
8 may not be picked on this jury has nothing to do with your
9 ability to sit on any other jury.

10 Would the bailiff please seat by order the first 12?

11 THE BAILIFF: Okay. We seat you first
12 row, first juror will sit in the first seat in the first row,
13 okay? Terry Tilghman -- or Terry Gray.

14 THE COURT: Ma'am, have a seat right up
15 here in the front row in the first seat. Thank you.

16 THE BAILIFF: Richard Caraway. Maxine
17 Howard. George Dermer. Karen Tipton. Brad Seelback. Linda
18 Black. Panda Heatherly-Lantz. John Lanam. Marsha Danadic.
19 Kasey Kelly. Thelma Rankin.

20 THE COURT: Okay. Very good. Does the
21 State have any challenge for cause of any of the 12 jurors
22 seated? I'm talking about for cause now.

23 ATTY. BECKER: For cause?

1 THE COURT: Yeah, I'm asking for cause.
2 Do you have any further challenge for cause?

3 ATTY. BAILEY: No challenges for cause,
4 Your Honor. We pass.

5 THE COURT: Defense?

6 ATTY. JUHASZ: We have no challenges for
7 cause, Your Honor.

8 THE COURT: Okay. Peremptory to the
9 State.

10 ATTY. BAILEY: The State would like to
11 thank and excuse Mr. Caraway.

12 RICHARD P. CARAWAY: Okay.

13 THE COURT: Sir, we thank you for all your
14 time and trouble being here.

15 RICHARD P. CARAWAY: Okay.

16 THE COURT: But thank you for
17 participating. Appreciate it.

18 RICHARD P. CARAWAY: You're welcome.

19 THE COURT: Yes, you're free to go. Thank
20 you very much.

21 ATTY. BECKER: Thank you, Mr. Caraway.

22 ATTY. BAILEY: Thanks, Mr. Caraway.

23 ATTY. INGRAM: Thank you, Mr. Caraway.

1 ATTY. JUHASZ: Thank you.

2 (Whereupon, Richard P. Caraway was
3 dismissed from the jury.)

4 THE COURT: Peremptory to the defense.

5 THE BAILIFF: Aren't you going to put the
6 next one in?

7 THE COURT: Huh? Oh, yeah, put the next
8 in. I'm sorry.

9 THE BAILIFF: Mary Costello.

10 THE COURT: You folks don't know how
11 miserable my life would be without my bailiff, I'll tell you.
12 Peremptory to the defense.

13 ATTY. INGRAM: The defense would thank and
14 excuse Mr. Seelback, Your Honor.

15 THE COURT: Sir, we thank you very much
16 for your time and trouble.

17 BRAD SEELBACK: Thank you.

18 ATTY. JUHASZ: Thank you, sir.

19 (Whereupon, Brad Seelback was dismissed
20 from the jury.)

21 THE BAILIFF: Gary Phillips.

22 THE COURT: Peremptory to the State.

23 ATTY. BAILEY: The State would like to

1 thank and excuse Mrs. Costello.

2 MARY J. COSTELLO: Okay.

3 THE COURT: Ma'am, thank you very much for
4 your time and trouble.

5 MARY J. COSTELLO: Thank you.

6 (Whereupon, Mary J. Costello was dismissed
7 from the jury.)

8 THE BAILIFF: Todd Davidson.

9 THE COURT: Peremptory to the defense.

10 ATTY. INGRAM: Your Honor, the defense
11 would thank and excuse Mr. Dermer.

12 THE COURT: Sir, we thank you so much.

13 GEORGE E. DERMER: You're welcome.

14 (Whereupon, George E. Dermer was dismissed
15 from the jury.)

16 THE BAILIFF: Nathan Crocker.

17 THE COURT: Peremptory to the State.

18 ATTY. BAILEY: The State would like to
19 thank and excuse Miss Howard.

20 THE COURT: Ma'am, thank you so much.

21 MAXINE HOWARD: Thank you.

22 ATTY. JUHASZ: Thank you, ma'am.

23 ATTY. BECKER: Thank you.

1 (Whereupon, Maxine Howard was dismissed
2 from the jury.)

3 THE COURT: Next.

4 THE BAILIFF: Carol Selak.

5 THE COURT: Peremptory to the defendant.

6 ATTY. INGRAM: The defense would thank and
7 excuse Mrs. Black.

8 THE COURT: Mrs. Black, thank you so much.
9 Your dogs can be happy now.

10 ATTY. JUHASZ: Thank you.

11 ATTY. BECKER: Thank you, Mrs. Black.

12 ATTY. BAILEY: Thank you.

13 (Whereupon, Linda J. Black was dismissed
14 from the jury.)

15 THE BAILIFF: Amy Barlett.

16 THE COURT: Peremptory to the State.

17 ATTY. BAILEY: The State would like to
18 thank and excuse Mr. Crocker.

19 THE COURT: Sir, thank you so much.

20 ATTY. JUHASZ: Thanks, Mr. Crocker.

21 ATTY. INGRAM: Thanks, Mr. Crocker. Have
22 a good day.

23 ATTY. BECKER: Thank you, Mr. Crocker.

1 (Whereupon, Nathan Crocker was dismissed
2 from the jury.)

3 THE BAILIFF: Victor Sabulsky.

4 THE COURT: Peremptory to the defense.

5 ATTY. INGRAM: The defense would thank and
6 excuse Mr. Lanam, Your Honor.

7 THE COURT: Sir, thank you.

8 ATTY. JUHASZ: Thank you, Mr. Lanam.

9 ATTY. INGRAM: Thank you.

10 ATTY. BECKER: Thank you.

11 ATTY. BAILEY: Thanks.

12 (Whereupon, John D. Lanam was dismissed
13 from the jury.)

14 THE COURT: Next.

15 THE BAILIFF: Judith Elliott.

16 THE COURT: Peremptory to the State.

17 ATTY. BAILEY: Yeah. The State would like
18 to thank and excuse Miss Elliott.

19 THE COURT: Miss Elliott, thank you,
20 ma'am.

21 JUDITH M. ELLIOTT: Thank you.

22 ATTY. JUHASZ: Thank you, ma'am.

23 JUDITH M. ELLIOTT: Thank you.

1 ATTY. BECKER: Thank you.

2 (Whereupon, Judith M. Elliott was
3 dismissed from the jury.)

4 THE BAILIFF: Salina Snyder.

5 THE COURT: Peremptory to the defense.

6 ATTY. INGRAM: We would thank and excuse
7 Karen Tipton, Your Honor.

8 THE COURT: Thank you so much.

9 ATTY. JUHASZ: Thank you, ma'am.

10 (Whereupon, Karen S. Tipton was dismissed
11 from the jury.)

12 THE BAILIFF: Margaret Fellows.

13 THE COURT: Last peremptory to the State.

14 ATTY. BAILEY: If I might have a moment,
15 Your Honor? The State would like to thank and excuse
16 Miss Snyder.

17 THE COURT: Ma'am, thank you.

18 SALINA M. SNYDER: Thanks.

19 (Whereupon, Salina M. Snyder was dismissed
20 from the jury.)

21 THE COURT: Next.

22 THE BAILIFF: Margaret Kay.

23 THE COURT: Sixth and final peremptory to

1 the defendant.

2 ATTY. JUHASZ: Can we have just one
3 moment, Your Honor?

4 ATTY. INGRAM: The defense is satisfied
5 with the jury as presently constituted.

6 THE COURT: Okay. Pass. We have a jury
7 seated. Would counsel approach, please, for a moment?

8 (Whereupon, a bench conference was held.)

9 ATTY. BECKER: Thank you, Your Honor.

10 THE COURT: Ladies and gentlemen, this is
11 like trying to plan a battle campaign. You organize this,
12 you organize that, this, that goes wrong, that goes wrong.
13 What we're trying to do is save all of you as much time from
14 sitting around as possible. And, as you can see, our best
15 efforts are not all that good, but it's the best we're able
16 to do, so we do appreciate your patience.

17 Okay. You three gentlemen in the back, I'm going to
18 ask you to come in tomorrow -- Monday at 11:00 o'clock. The
19 three of you will be with hopefully four or five others from
20 which we will pick our alternates. We would like very much
21 to have four alternates, if possible. If we only get three
22 then we're going to have to live with that, but we're going
23 to shoot for four.

1 Let me read something here to all of you over the
2 weekend. You folks will report at 1:00 o'clock Monday. 1:00
3 o'clock Monday afternoon this trial will begin. It is
4 important that all of you be fair and attentive throughout
5 the trial. You are not to discuss this case among yourselves
6 or with anyone else. Do not permit anyone to discuss it with
7 you or in your presence.

8 If you should find during any break that we have
9 during the next several weeks that -- it's not uncommon for
10 this to happen -- you're out in the hallway and one of the
11 attorneys may call a witness they're going to put on and they
12 start discussing the case with them and what the testimony is
13 going to be, remove yourself from that conversation. You are
14 not to permit anyone to discuss anything about this case with
15 you or in your presence, and you are not to form or express
16 any opinion on this case until it is finally submitted to
17 you.

18 We had a case here some years ago where several of
19 the jurors -- it was a long, it was a murder case, in fact.
20 They went down, they were having lunch together, people who
21 had met on the jury, and someone at one of the other tables
22 heard a discussion about the case. Well, that just won't
23 fly. You know, it means we have to start all over again,

1 declare a mistrial. And I know how natural it is. If you
2 sit here, particularly over the course of a couple weeks, and
3 you hear things about the case, it's only natural to want to
4 talk to somebody about it. Please, you can't do that. We've
5 got a lot, we've got five weeks tied up already, and it just
6 is not possible for somebody to get a trial under the rules
7 we have to apply if people don't observe that.

8 Now, it's difficult probably to understand why you
9 can't discuss this case among yourselves or with friends or
10 relatives, but it's very simple why that isn't permitted.
11 When you talk to somebody, say your spouse or a friend or
12 something, if you were to engage in a conversation you're not
13 going to stand up there and give a monologue. It's always a
14 dialogue, they're saying something, you're saying something
15 back, and they well can say something that may cause a light
16 bulb you think to go on in your head and say I never thought
17 of that. That's what the other jurors are for when you get
18 back in the jury room at the proper time, to discuss the
19 evidence you've heard. Anyone you talk to outside on this
20 matter, they haven't sat through the evidence.

21 Another thing is you will get the opening
22 statements, you'll get the evidence, you'll get the closing
23 arguments, and then you'll get the instruction of law. Like

1 Mr. Bailey's famous chocolate cake, you can't make a good
2 chocolate cake until you have everything, all the right
3 ingredients. That takes all of that. Once you have that and
4 you're back in the jury room, then you're ready to start
5 thinking through what the proper answer is here. You can't
6 do it until you have everything in your mind.

7 Now, you're called upon to explain this rule -- I'm
8 addressing you gentlemen back there also -- to your friends
9 and family. It's only natural if somebody finds you are on
10 any type of a jury case -- most people never get an
11 opportunity to serve on a jury and people are interested.
12 They see things on TV and it looks like a glamorous thing to
13 do. Well, it's a lot of hard work, it's a lot of boredom,
14 it's a lot of down time, but any trial has its points of real
15 drama also. But it's such a very important thing that you've
16 agreed to do, I'm telling you the proper way that you have to
17 maintain your activities during the trial so that everyone
18 has a fair trial.

19 Now, when the trial is over I will release you from
20 this instruction and at that time, depending on your
21 preference, you can talk with whomever after the trial is
22 completely over or you can keep your own counsel. Many times
23 jurors decide they don't want to discuss it. Others, they

1 talk with whomever. But until the end of that trial comes
2 and I formally release you, please keep these instructions in
3 mind both here and at home.

4 Now, likewise, you're not permitted to talk with the
5 attorneys, the parties or witnesses during the trial.
6 Likewise, the participants in the trial, whether it be the
7 attorneys, the witnesses, are under a similar instruction not
8 to approach or talk to the jury. A conversation can be most
9 innocent but it has the appearance too many times of
10 impropriety. You folks have a very important job here of
11 determining the facts in this case and you must do that on
12 the evidence and the law.

13 If the attorneys at times pass you up, say when
14 we're all coming in here in the morning, and the attorneys
15 act like they're being rude, like they don't know you exist,
16 do not think that they're being rude because they're merely
17 following this instruction to the letter. It is not uncommon
18 for people to nod or to say good morning or something like
19 that, and I'd probably find nothing wrong with that, but
20 there should be no even amenities passed between the jury and
21 anyone else. You folks have a very serious job here and that
22 should not be interfered with in any way so that it even
23 looks like it's an improper action.

1 Now, should anyone attempt to discuss this case with
2 you you're called upon under your oath that you will take
3 Monday to report that incident immediately to this Court.
4 There was a very good movie many years ago with Lee J. Cobb
5 and Henry Fonda called *12 Angry Men* where in a murder case
6 there was one holdout, I don't remember which way it was, but
7 that person went out during the course of an evening and
8 found a piece of evidence he brought back into the jury room
9 and turned the jury around. That would be an improper
10 decision. It is important, it is necessary, it is mandatory
11 that no one attempt to find out anything about this case.
12 You've been instructed from the very beginning not to do
13 that. That must also maintain throughout the balance of the
14 trial. You will be given everything that is necessary within
15 this courtroom to make an informed decision. That will come
16 from the prosecutor's office. As I said, the prosecutor will
17 maintain their burden of proof or they will not and you will
18 make your decision on that basis.

19 Now, any violation, excuse me, of these orders may
20 cause a new trial to be required or may require a penalty for
21 disobedience, and sadly we've had cases that have had
22 mistrials declared and we start all over again. And it
23 always goes back to somebody not thinking. I don't think I

1 remember a case where somebody intentionally did something
2 wrong, but they just didn't keep in mind you can't talk about
3 it, okay?

4 Now, during the course of the trial we usually go an
5 hour and a half. Our reporter gets quite tired. This is a
6 demanding job. It doesn't look -- they make it look simple,
7 but they all end up with carpal tunnel eventually and it's a
8 very demanding job so they have to take a break. But many
9 times during the course of a trial some of us may not be
10 feeling well or whatever. If anybody experiences any
11 personal problem, hold your hand up. The judge is always
12 ready to take a break, okay? Keep that in mind. But we
13 usually try not to go more than an hour and a half at a time
14 because everybody needs a break after that. You should just
15 talk to the reporter. Now, we'll have different reporters.
16 Kelly is on this week and there's a couple others that will
17 be here, but give them the eye, tell them you need a break,
18 and that's no problem.

19 Now, I'm called upon to repeat this instruction,
20 this admonition, every time you're allowed out of the jury
21 box. It will be in a very abbreviated form and it will be
22 "Remember you're not to discuss anything or form any
23 opinion." If I should overlook doing so and Laurie doesn't

1 remind me, then you must remember that it applies throughout
2 the trial.

3 If during the trial you find that you cannot hear
4 something or understand something that's happening, and many
5 times the attorneys will be walking or showing things and
6 whatever, you may not be able to see or hear. The acoustics
7 are 1895 circa and not real good for anybody that has any
8 type of hearing problem, and at times people with perfectly
9 good hearing don't catch things in here. Hold your hand up.
10 Don't be embarrassed to do that. You folks must keep in mind
11 you are the people that are going to have to decide this
12 case. You want to know everything about it so when you get
13 back there when somebody is talking about some point you're
14 up to speed, you know what's going on, you don't have to take
15 somebody else's word for it, you've heard it or you've seen
16 it, so don't be cautious about doing that.

17 The last point is on the question of note taking.
18 That was mentioned to some of you. There's actually nothing
19 in Ohio that says that a Court can instruct you to take notes
20 or not to take notes. Remember the O.J. trial they gave
21 everybody copious amounts of tablets and they were all
22 scribbling on them and all this stuff. One of them even
23 published it afterwards I think. I ask you not to take notes

1 and let me tell you why.

2 Unless you happen to be very expert in shorthand or
3 something, you're not going to get everything. You're going
4 to write bits and pieces down. When you're writing something
5 down you're going to miss something else, there's a big
6 danger of that. Even our reporters, all of whom are very
7 skilled, have to at times during a trial with testimony say,
8 "Wait a minute." Some of them do it with a little bit more
9 vigor than others, but they'll say, "Wait a minute. I can't
10 take four people talking at one time." You're not going to
11 get everything.

12 My life experience has been, excuse me, that
13 whenever -- no, thanks. I got coffee. I just am losing my
14 voice. Whenever we write something down and later on, if
15 memory fails, you try to remember something, whatever you've
16 written down, it may be right or wrong, but you're going to
17 tend to trust what you wrote down. It takes on kind of a
18 life and validity of its own because it's in writing. Many
19 times it's not entitled to that. So I think that incomplete
20 or partial notes can cause a lot of problems because you have
21 11 people who get back there and say, "Well, I remember it,
22 this is what was said," and somebody says, "No, no. I got it
23 written down right here. You're all wrong." The best of you

1 are going to say well, they wrote it down, that might be
2 right. It causes nothing but problems. So I would ask you
3 please not to take notes. That's the reason I tell you to
4 listen and watch. If you don't see or hear something, hold
5 your hand up. And I trust that when you get back there the
6 12 of you will not have missed a thing. You will have
7 everything by way of evidence that you need.

8 We will attempt to have the instruction of law
9 printed up to go back with you. That's usually where most of
10 the questions come up from the jury and what did you say
11 about this question of law? The age of the computer, it's
12 often available for us to have the written instruction with
13 you, and that will aid you, but you must trust your memories
14 and whatever exhibits you may have that have been admitted in
15 making your decision.

16 Okay. When we return Monday at 2:00, by that time
17 we're going to make every effort to have these gentlemen
18 sorted out so we know whose the alternates. You will all be
19 sworn in as a jury in this matter in the order in which you
20 have been picked and we will go into some preliminary
21 instructions I must read to you. We may well then during
22 Monday afternoon listen to most, if not all, of the opening
23 statements. That's an opportunity for you to know at that

1 point in time particularly what the State alleges to be the
2 facts of this case. And we will go day from day then when we
3 get into evidence on what witnesses are available. Sometimes
4 we have to juggle them around because there will be quite a
5 few witnesses, I understand.

6 But please keep in mind whenever you're sitting
7 wondering what all those lawyers and judges are doing that
8 there's one thing they have not forgot about and that is your
9 comfort and that we're taking your valuable time up. I know
10 it will be easy at times for you to think that we've
11 forgotten about you, but believe me, we haven't, and I tell
12 you quite frankly why we haven't. We've all at various times
13 in our careers been involved with juries that have gone sour,
14 they get mad, and usually it goes back to somebody not
15 keeping them up to speed on what's happening. They think
16 that their time is being wasted. I will make every effort to
17 see that you don't feel that way. If we have a long period
18 of time I will at least send somebody or come to you myself
19 and tell you here's what's happening, we're tied up, we're
20 going to be this much longer. Don't ever hold me to how much
21 longer I tell you though, okay? Very good.

22 Gentlemen, 11:00 o'clock Monday. The rest of you at
23 1:00 o'clock Monday. Keep my instructions in mind. You got

1 a blank mind until you come back here, okay? Enjoy
2 yourselves over the weekend. Thank you.

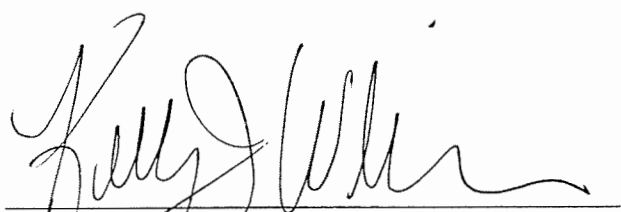
3 (Whereupon, Court was recessed for the
4 day.)

5 * * *

6 SEE VOLUME XXII

7
8
9 REPORTER'S CERTIFICATE

10
11 This is to certify the foregoing represents a true and
12 correct copy of the proceedings had in the aforementioned
13 cause as reflected by the stenotype notes taken by me on the
14 same.

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KELLY J. WILSON
Official Court Reporter

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,) Case No. 2001-CR-793
)
Plaintiff)
)
-vs-) JUDGE JOHN M. STUARD
)
DONNA M. ROBERTS,)
) PARTIAL
Defendant) TRANSCRIPT OF PROCEEDINGS

VOLUME XXII

JURY TRIAL - VOIR DIRE
MAY 9, 2003

BEFORE: HONORABLE JOHN M. STUARD

AT: Trumbull Co. Court of Common Pleas
Courtroom Number 2
160 High Street, NW
Warren, Ohio 44481

APPEARANCES:

On behalf of the Plaintiff:
MESSRS. KENNETH N. BAILEY
and CHRISTOPHER D. BECKER,
Attorneys at Law

On behalf of the Defendant:
MESSRS. J. GERALD INGRAM
and JOHN B. JUHASZ,
Attorneys at Law

Official Court Reporter: Kelly J. Wilson

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1 (MAY 9, 2003)

2 PROSPECTIVE JUROR JOSEPH CHETSKO

3 THE COURT: Good morning, Mr. Chetsko.

4 JOSEPH CHETSKO: Good morning.

5 THE COURT: I understand you're a little
6 bit out of sorts about sitting around and, believe me, I
7 don't blame you a bit.

8 JOSEPH CHETSKO: Well, two days in a row,
9 I mean, it makes you wonder.

10 THE COURT: Well, let me explain to you
11 something. We have to go through this long drawn out
12 procedure talking to each of you, and no matter how well we
13 try to plan it, some of them take longer than others. We've
14 had times here where we haven't had anybody to talk to
15 because we've gone through them real quickly, and at other
16 times, in trying to keep a backlog down there so that we
17 don't have down time, we end up that we've had several people
18 like yourself who have sat down there much too long. But
19 please know that we're not taking your time lightly, we're
20 just trying to get through this thing, okay?

21 Did you have an opportunity to read that
22 questionnaire that was handed out to you?

23 JOSEPH CHETSKO: Yes, I did.

1 THE COURT: Okay. You understand that
2 this is an aggravated murder. There are two counts of
3 aggravated murder filed against Donna Roberts with
4 specifications. Under Ohio law just because a person is
5 found guilty of murder does not mean that they automatically
6 face the death penalty. In this particular case there are
7 specifications attached to the charges of aggravated murder,
8 which means that this jury, if they find that the State has
9 proven beyond a reasonable doubt all the necessary elements
10 to prove the aggravated murder with the specifications, that
11 the jury may have to go into a second phase to consider the
12 possibility of imposing the death penalty or a lesser penalty
13 of life without chance of parole or life imprisonment with no
14 chance of parole before 25 or 30 years.

15 Now, we don't know what this jury is going to do,
16 because there's been no evidence presented, until they make
17 their decision. It may well be that if the State fails to
18 carry the burden of proof then this jury would make a finding
19 of not guilty. That would be the end of the trial. But we
20 can't wait until the jury makes their decision because if
21 they should find the State has proven their case, then they
22 have to then consider the second phase.

23 You may have people on there that firmly believe in

1 an eye for an eye, if you kill somebody you forfeit your
2 life. Well, that isn't the law of Ohio so that wouldn't be
3 fair to a defendant because a defendant has the right in that
4 second phase to have the jury consider the aggravating
5 circumstances which the prosecution will present, and that
6 will be reasons given to the jury in favor of imposing the
7 death penalty, and they have to weigh those factors against
8 mitigating factors, which are reasons put to the jury as to
9 why in this particular case they should not impose the death
10 penalty.

11 Likewise, if we didn't know up front, and that's
12 what's taken all this time is to find out primarily each
13 individual possible juror's view on the death penalty. If
14 you had somebody on there, and there are people who for
15 religious or moral reasons could never make that decision of
16 whether a person receives the death penalty or not, then that
17 type of person cannot be fair to the State because under the
18 law the State has the right to ask the jury to consider and
19 impose the death penalty if the facts warrant it. The State
20 has proven beyond a reasonable doubt that there is reasons to
21 impose the death penalty that outweigh any factors speaking
22 against it, so we have to go through this.

23 And the person that makes the correct type of juror

1 in a death penalty case is someone who has their own opinion.
2 We all have our opinion about the death penalty. Some are
3 more in favor, some less. But it has to be people who are
4 able to follow the law, that they don't have such an
5 entrenched view of the death penalty wherein they wouldn't be
6 able to be fair to one side or the other, so that's what you
7 are going to be asked concerning that issue. The other issue
8 is on pretrial publicity. Where do you live at, sir? I
9 don't have your --

10 JOSEPH CHETSKO: I live in Kinsman.

11 THE COURT: Kinsman. That's a good area.
12 I live down in Hartford. What papers do you take?

13 JOSEPH CHETSKO: I don't take any papers.

14 THE COURT: Oh, okay.

15 JOSEPH CHETSKO: If you look at my
16 questionnaire I read, everything is true in there.

17 THE COURT: Okay. I didn't have the
18 benefit of one of these questionnaires. In any event, they
19 will ask you whether or not you have read or heard, seen
20 anything on TV about this case that would make it difficult
21 or impossible for you to set that aside. This case in order
22 to be fairly tried has to be based on the evidence presented
23 only in this courtroom. Anything that someone may have read

1 some other time may be true or may not be true. So they will
2 make inquiry as to what you know or don't know about the
3 case. Fair enough?

4 JOSEPH CHETSKO: Oh, I'll give you an
5 honest answer, that's all I can do.

6 THE COURT: Okay. Mr. Becker.

7 ATTY. BECKER: Thank you, Your Honor.
8 Mr. Chetsko, correct, is that how you pronounce it?

9 JOSEPH CHETSKO: That's it.

10 ATTY. BECKER: All right. My name is
11 Chris Becker. I'm with the county prosecutor's office. This
12 is Mr. Ken Bailey. I assume you remember about a month ago
13 when you were in the large courtroom down the hall.

14 JOSEPH CHETSKO: (Nods head
15 affirmatively.)

16 ATTY. BECKER: As the Court indicated to
17 you, we're going to ask you some questions touching upon your
18 ability to serve as a fair and impartial juror in this case.
19 Some of the questions may seem a little personal, some of
20 them may be somewhat intrusive, but it's important for not
21 only the State but the defendant in this case to know what
22 your answers are.

23 I realize, and we've all read over your

1 questionnaire, and obviously sometimes those questions and
2 those answers lead to more questions, and that's really the
3 purpose of this procedure. Before I get started, though, I'm
4 going to ask you a very up front question, and I guess my
5 question is, and there's no right or wrong answers here and
6 there's no question that's going to upset us because, like
7 the Court had indicated, we've had a number of people excused
8 for many, many different reasons, would you rather not be
9 here and not be serving on this case?

10 JOSEPH CHETSKO: I'm going to tell you
11 something, if I wanted not to be on the case or to serve I
12 would have said the first day.

13 ATTY. BECKER: Okay. Well, the only
14 reason I ask that is because there's been some hint that --

15 JOSEPH CHETSKO: Am I happy?

16 ATTY. BECKER: -- you may not have come
17 back here.

18 JOSEPH CHETSKO: I am not happy.

19 ATTY. BECKER: Okay. And I --

20 JOSEPH CHETSKO: Let me tell you one
21 thing, you asked me in that questionnaire what can I do to
22 make the justice system work better.

23 ATTY. BECKER: Uh-huh.

1 JOSEPH CHETSKO: And I think I put down
2 you do the best you can.

3 ATTY. BECKER: Well, you had three or four
4 answers, as I recall, to this question.

5 JOSEPH CHETSKO: Well, I went down, I had
6 an appointment at 1:30 to be here. I was here. I waited
7 three hours and I get told to come back Friday. I come back
8 Friday at 9:00 o'clock and I'm told right away that it's
9 10:00 o'clock. Now, if I were running a business like this
10 court runs I would be broke, so that's my answer.

11 ATTY. BECKER: All right. Well, let me
12 ask you something, you're obviously a little upset at the
13 court system here, and particularly this case and this system
14 of choosing jurors. Would you feel uncomfortable sitting as
15 a juror or feel that you would maybe let your anger --

16 JOSEPH CHETSKO: No. I told you, if I
17 wanted to get out of this I would have stated that when he
18 said who doesn't want to be there.

19 ATTY. BECKER: Okay. So you feel you
20 could sit as a fair and impartial juror in this case?

21 JOSEPH CHETSKO: I would hope so.

22 ATTY. BECKER: All right. Now, I'm going
23 to tell you something very up front right now. You are not

1 going to be a regular juror in this case, you're going to be
2 what we call an alternate juror, and what that means is you
3 may sit in this courtroom for three or four weeks and hear
4 testimony and you are only here in case one of these regular
5 jurors that we've already chosen to sit, and at some point
6 the Court may say to you -- well, because it's a capital case
7 they're going to tell you that you have to sit in there
8 during the deliberations during the first phase and then
9 you're going to possibly come back. If the jury comes back
10 for a second phase, you may have to come in there. But you
11 may sit three or four weeks in this case and never get to
12 participate and never get to vote. Is that going to cause
13 you some problems?

14 JOSEPH CHETSKO: It won't cause me no
15 problems at all.

16 ATTY. BECKER: Okay. All right.

17 ATTY. INGRAM: Chris.

18 (Whereupon, a discussion was had among the
19 attorneys.)

20 ATTY. BECKER: Come here. And I
21 apologize, Mr. Chetsko.

22 (Whereupon, further discussion was had
23 among the attorneys.)

1 ATTY. BECKER: All right. Mr. Chetsko,
2 I'm going to follow that last question up that I had for you.
3 I can't promise you that this case is going to run like
4 clockwork and I understand you're upset about wasting your
5 time which, believe me, I appreciate that it's valuable. My
6 time is valuable. Yours is just as valuable, if not more
7 valuable. If you sit on this jury we're going to have a
8 number of delays in this case, I can tell you right now.
9 First of all, this Court by its very nature has to not have
10 court every Thursday morning because it has to tend to other
11 criminal matters. There are days where we may not even be in
12 this courtroom because we --

13 JOSEPH CHETSKO: Excuse me. All I need to
14 know is a day ahead of time what you're going to do, or at
15 the end of the day what you're going to do.

16 ATTY. BECKER: Okay. Well, we should be
17 able to give you that. But you understand that we're dealing
18 -- I can't tell you what's going to happen in this trial, but
19 in many trials that we've been involved with, for instance, a
20 witness may come up here and may say something or do
21 something or testify to something that we may take a break
22 and go into chambers for half an hour, we may have to --

23 JOSEPH CHETSKO: I have no problem with

1 that.

2 ATTY. BECKER: Okay.

3 JOSEPH CHETSKO: It's the idea that you
4 show up and nothing happens.

5 ATTY. BECKER: Well, what I'm telling you
6 is that that may happen many times in this case.

7 JOSEPH CHETSKO: But if you know, if you
8 come out and say for the day it's over or whatever, you can
9 go, I have no problem with that.

10 ATTY. BECKER: Okay.

11 JOSEPH CHETSKO: It's the idea of waiting
12 down there, watching TV.

13 ATTY. BECKER: Well, what I'm telling you
14 is that that potentially could happen. There may be --

15 JOSEPH CHETSKO: I have no problem with
16 that.

17 ATTY. BECKER: Okay. All right.

18 THE COURT: I think this gentleman feels
19 like we all do when we go to a doctor's office. They tell
20 you to be there at 2:00 and you sit there and you get in at
21 5:00, and I understand that. There is no way that I can
22 convey to you -- this is, this type of trial is totally
23 different from any other type of trial because of this

1 individual voir dire. There's no way we can predict how long
2 it's going to take and that means we inconvenience people.
3 It's built right into it.

4 JOSEPH CHETSKO: I understand that and
5 that's not the problem.

6 THE COURT: I feel that you do understand,
7 so let's go on from there.

8 JOSEPH CHETSKO: Yeah.

9 ATTY. BECKER: All right. Well, let's
10 move forward then. I notice on your questionnaire that you
11 do believe in the death penalty.

12 JOSEPH CHETSKO: Yes, I do.

13 ATTY. BECKER: All right. And that is one
14 of the first and primary concerns of both parties in this
15 case because you understand obviously the State is seeking
16 the death penalty in this case and we need jurors that are
17 able to impose the death penalty. I want you to --

18 ATTY. INGRAM: Objection.

19 ATTY. BECKER: If we prove our case.

20 THE COURT: Objection?

21 ATTY. INGRAM: Yes. The statement was we
22 need jurors who are --

23 ATTY. BECKER: The State needs jurors that

1 can be fair and can fairly consider the death penalty if
2 we're able to prove our case.

3 ATTY. INGRAM: That's fine.

4 THE COURT: Okay.

5 ATTY. BECKER: All right. Can you
6 imagine, and I assume you have and that's why you answered
7 the way you did, if the State were to prove its case beyond a
8 reasonable doubt you can foresee yourself signing a piece of
9 paper, putting your signature on a piece of paper calling for
10 the imposition of the death penalty?

11 JOSEPH CHETSKO: Yes, I can.

12 ATTY. BECKER: All right. Now, I don't
13 know how much you know about the capital, capital cases in
14 Ohio and the way they're tried so I'm going to explain to
15 you. And let me ask you, do you know anything about how
16 capital cases are tried here?

17 JOSEPH CHETSKO: Not officially at this --
18 really nothing.

19 ATTY. BECKER: All right. This case, as
20 all capital cases are in Ohio, is a two-step process.
21 There's going to be a first phase of this trial. That first
22 phase is just like any other criminal case. Mr. Bailey and I
23 have to prove to you and the fellow jurors that are on this

1 jury that this defendant, Donna Roberts, is guilty beyond a
2 reasonable doubt. There are four counts in the indictment;
3 aggravated burglary, aggravated robbery, and two counts, even
4 though there's only one death, two counts of aggravated
5 murder. Both of those counts of aggravated murder have
6 specifications or attachments or special things that make her
7 eligible for the death penalty.

8 Now, you and your fellow jurors may acquit her, you
9 may find her not guilty of everything, and we all go home
10 after the end of that first phase, that first trial. You may
11 find her guilty of aggravated murder but not of the special
12 things that make it a death penalty eligible case, and at
13 that point we all go home again. Excuse me. Or you may find
14 her guilty of the aggravated murder count and those
15 specifications, or those special things that get us to the
16 death penalty phase.

17 Then and only then do we begin a second phase, and
18 in that second phase you and your fellow jurors have to wipe
19 the slate clean. You have to start with a blank piece of
20 paper like there in the corner. You're going to know,
21 though, if we get to that second phase because the only way
22 we get to that second phase is if you and your fellow jurors
23 convict her of aggravated murder and that she committed that

1 aggravated murder either with prior calculation and design,
2 which is what we call premeditated murder -- it used to be
3 the premeditated murder statute, meaning she planned it, or,
4 and/or she also committed this offense while helping another
5 person or aiding and abetting another person during the
6 commission of a felony, that being the aggravated burglary
7 and the aggravated robbery. Now, I probably haven't made
8 that as clear as I probably can, but that's as clear as I can
9 probably make it in terms of simplicity.

10 So knowing that you would perhaps be in this second
11 phase if you were to find her guilty, you're going to know
12 that she's involved in a premeditated murder and/or a murder
13 that was committed during the course of a felony, that being
14 aggravated burglary or aggravated robbery, do you believe you
15 can start fair again and again put the burden solely on
16 Mr. Bailey and I to prove that those things, those bad
17 things, specifically the aggravated burglary and aggravated
18 robbery specifications, that they outweigh the mitigating
19 factors?

20 JOSEPH CHETSKO: Yes, I can, because, like
21 I answered in the questionnaire, I said that you'd have to
22 prove it.

23 ATTY. BECKER: Okay. And that's fair

1 enough. And when you get to that second phase, if we get
2 there, you're going to have four options, and I assume you
3 remember that from the handout you read.

4 JOSEPH CHETSKO: (Nods head
5 affirmatively.)

6 ATTY. BECKER: You're going to have death
7 obviously, life with no parole, life with no parole after 30
8 years, and life with no parole after 25 years. And you will
9 be able to consider all four of those fairly and equally,
10 correct?

11 JOSEPH CHETSKO: Yes.

12 ATTY. BECKER: All right. And just so you
13 understand, that's been a lot of the problem and a lot of the
14 reason for the delay. Some people we have spent 20 minutes,
15 30 minutes, 40 minutes on that very issue because they say I
16 can't consider all four of those options. Some of them say I
17 can't consider the death penalty, some of them say I will
18 only consider the death penalty. So just so you understand
19 why we're in this predicament and why we run so slow, some
20 people are not as clear and concise as you are. Some people
21 say well, I don't know, maybe, I guess. They're not as firm
22 in their beliefs. So just so you understand, that's why
23 we're where we're at.

1 You understand that in both phases, the guilty phase
2 where we have to prove these things, that she's done
3 something, and if we get to a second phase, the penalty
4 stage, we have to prove to you and it's Mr. Bailey and the
5 State's burden to prove beyond a reasonable doubt that crimes
6 were committed and that the penalty is warranted, correct?

7 JOSEPH CHETSKO: Yes, that's the answer I
8 want.

9 ATTY. BECKER: Okay. And you will be fair
10 and consider all four options at that second level if we get
11 to that second stage?

12 JOSEPH CHETSKO: Yes.

13 ATTY. BECKER: All right. Now, looking at
14 your questionnaire, Mr. Chetsko, it's my understanding that
15 you have not heard any pretrial publicity connected with this
16 case.

17 JOSEPH CHETSKO: No. I don't listen to
18 the radio and I don't read the paper because -- I don't get
19 the paper because when we order the paper the paper doesn't
20 come all the time so I'm paying for a paper I don't get.

21 ATTY. BECKER: And I also notice that I
22 think you had some problems in the paper about -- was it you
23 that was quoted at some point, misquoted in the paper?

1 JOSEPH CHETSKO: I don't think so.

2 ATTY. BECKER: Okay. That was the next
3 one. Okay. I'm getting my people mixed up here. I'm sorry.
4 You basically read the Wall Street Journal I think?

5 JOSEPH CHETSKO: Yes.

6 ATTY. BECKER: All right. And I assume
7 since you live in Kinsman, which is almost in Ashtabula
8 County and up on the PA line, you don't really keep track of
9 what goes on in Howland or that part of the county?

10 JOSEPH CHETSKO: No.

11 ATTY. BECKER: All right. Have you heard
12 anything from anybody, whether it be from the media or people
13 you work with, people in the community?

14 JOSEPH CHETSKO: If I heard anything it
15 just passed through the ears because I don't recognize --

16 ATTY. BECKER: You don't really care.

17 JOSEPH CHETSKO: I don't recognize any of
18 them.

19 ATTY. BECKER: And anything you may have
20 heard would not affect your ability to sit as a fair and
21 impartial juror in this case?

22 JOSEPH CHETSKO: I don't believe so.

23 ATTY. BECKER: Okay. Now I'm going to ask

1 you some general questions about generally jury service, and
2 every criminal case involves certain issues I guess and
3 certain, certain -- well, issues and, and, and -- what's the
4 word I'm looking for? I'm a little bit brain dead this
5 morning.

6 ATTY. JUHASZ: Concepts.

7 ATTY. BECKER: Concepts. Thank you. In
8 this case, as in every criminal case, the defendant is
9 presumed innocent. I'm assuming you've heard of that term
10 either through something you've read or television or a novel
11 you may have read or something. That concept basically means
12 that she does not have to prove anything to you during these
13 proceedings. Do you agree with that concept?

14 JOSEPH CHETSKO: Yes, I do.

15 ATTY. BECKER: Okay. And do you believe
16 that it would be possible for Mr. Bailey and I to present to
17 you numerous witnesses, numerous exhibits and still not meet
18 our burden of proof beyond a reasonable doubt?

19 JOSEPH CHETSKO: I doubt it.

20 ATTY. BECKER: Well, it's conceivable
21 though, right?

22 JOSEPH CHETSKO: If you did your job I
23 feel it would be pretty hard not to see that.

1 ATTY. BECKER: Well, you understand our
2 job is only as good as the investigation that was done,
3 correct?

4 JOSEPH CHETSKO: Well, then that's the way
5 it would go.

6 ATTY. BECKER: Okay. And I'm going to use
7 a very simplistic example to point something out to you and I
8 just want to see if you agree with this example. We could
9 probably be here -- let's assume we're not here on this death
10 penalty case but we're here on a traffic accident and the
11 traffic accident occurred at Park Avenue and High Street at
12 12:00 noon, beautiful sunny day, and we only had one witness.

13 Mr. Bailey and I presented to you one witness for
14 the charge that this driver went through a red light at Park
15 Avenue and High Street and our one witness is the local
16 bishop for the Catholic Dioceses here in the
17 Youngstown/Warren area. And he says, "I always walk around
18 the courthouse square every day at 12:00 noon, I've been
19 doing it for 10 or 12 years, and before I cross the streets
20 down here I always look both ways because I know there's a
21 lot of wild drivers in the Warren area. Sometimes people are
22 ticked off from leaving the courthouse or muni court downtown
23 here. Whatever reason, I know they're speeding around

1 everywhere. They might be on their lunch break trying to run
2 errands.

3 "So on this particular day at 12:00 noon I'm
4 standing at the corner, I'm going east on High Street. I see
5 the green light on High Street. I see the flashing yellow
6 light or, I'm sorry, the flashing light that says 'walk', but
7 before I step out into the road I look both ways because I've
8 almost been hit many, many times and I know these drivers are
9 nuts.

10 "I look to the left, which is north on Park Avenue.
11 Don't see anything. I look to the right and here comes a guy
12 in a blue Chevy pickup truck just barreling down the road,
13 blows through the intersection and T-bones this guy right in
14 the intersection. I saw the whole thing. I have perfect
15 vision, 20/20. In fact, I had just been at the eye doctor
16 the other day, gave me 20/20 vision. I don't drink, I don't
17 smoke. I was only paying attention, I wasn't carrying on a
18 conversation with anybody."

19 If the charge was did somebody run through a red
20 light, you could basically find that guy guilty on just that
21 one witness, right? Would that be enough for you?

22 JOSEPH CHETSKO: Well, I know how I would
23 look at it, but no, I don't think I could. I would have --

1 ATTY. BECKER: And why not?

2 JOSEPH CHETSKO: I think you have to
3 question both people in that.

4 ATTY. BECKER: What do you mean question
5 both people?

6 JOSEPH CHETSKO: Well, the guy that went
7 through the red light, he might have a different story than
8 the guy who saw it. Most people don't realize what they see
9 at what time they see it.

10 ATTY. BECKER: Well, let me ask you this
11 though, you just told me a few minutes ago that you believe
12 in our presumption of innocence, correct?

13 JOSEPH CHETSKO: Right.

14 ATTY. BECKER: That driver of that car may
15 decide maybe he doesn't want to take the witness stand for
16 whatever reason. He's not required to. You don't have to
17 hear anything. You may never hear his side of the story. Do
18 you believe that we could prove our case with just that one
19 witness even if you didn't hear from the driver? That's all
20 the evidence you've had is just this one witness.

21 JOSEPH CHETSKO: Well, I guess you could.

22 ATTY. BECKER: Okay. So, I mean, and I
23 know that's a very simplistic example and we're trying to

1 speed this process up as much as we can for you, but you
2 believe we probably could?

3 JOSEPH CHETSKO: If, if the witness, if
4 you questioned the witness long enough and --

5 ATTY. BECKER: Right, and got enough
6 detail from him?

7 JOSEPH CHETSKO: Yes, and his story didn't
8 waver, I would say the one witness would be sufficient.

9 ATTY. BECKER: All right. And that's
10 generally what we're looking for. You wouldn't make the
11 driver in that car, you wouldn't sit here if you were a juror
12 on that case and say, "Boy, I wonder what the driver has got
13 to say about this? Boy, you know, I'm not going to find him
14 guilty," or "I am going to find him guilty because he didn't
15 get up and say what I wanted him to say. He didn't say
16 anything." You understand that's what the presumption of
17 innocence is all about? He doesn't have to, that driver in
18 that accident never has to take the witness stand, never has
19 to tell you his side of the story, right?

20 JOSEPH CHETSKO: He has the option to,
21 though.

22 ATTY. BECKER: But you can't, but the
23 Court is going to tell you you can't hold that against him,

1 the fact that he doesn't --

2 JOSEPH CHETSKO: I didn't say that. I
3 said the driver --

4 ATTY. BECKER: Sure. Sure, he has the
5 option.

6 JOSEPH CHETSKO: He has the option. If he
7 feels he's innocent he has the option to testify.

8 ATTY. BECKER: Well, and he also has the
9 option to stand up and have his attorney say in closing
10 arguments hey -- and let me give you another example. Let
11 me, let me, let me show you, illustrate by a very simplistic
12 example the other side of that coin.

13 Let's assume now instead of 12:00 noon it's 12:00
14 midnight. It's a rainy evening. There's an Irish bar down
15 the street here called Madigan's. Let's assume there are
16 three guys in Madigan's. Two of them wear glasses, the other
17 one wears contacts. They get in a big fight down there. The
18 bouncer throws them out. Sometime during being thrown out
19 and getting in this fight they break their glasses, the one
20 guy loses his contacts. They're drunk. They've been there
21 for seven or eight hours drinking two or three beers an hour.

22 They come stumbling down the street and it just so
23 happens they see a car, pickup truck, Chevy pickup truck,

1 coming through the intersection at High and Park Avenue and
2 it hits a car. And let's assume that the car the driver hits
3 is their cousin who was coming to pick them up at Madigan's
4 because they called right before the fight to get a ride.
5 And now they find out that the guy who has allegedly ran
6 through the red light is the brother of the bouncer that
7 threw them out of the bar.

8 Now, let's assume the brother who is driving through
9 the intersection, the defendant in that case, never takes the
10 witness stand. You're going to have a hard time finding the
11 guy guilty based on those three witnesses, the three drunks
12 who had their glasses broken and are protecting their cousin
13 ostensibly who is going through the intersection as well,
14 right? There's a lot of motive for why they testified that
15 the bouncer's brother was the one at fault, right?

16 JOSEPH CHETSKO: Theoretically speaking
17 you're right, but if you question them long enough the story
18 will come out probably, what happened.

19 ATTY. BECKER: If we ask them the right
20 questions. That's what our job is essentially. But you
21 would have some concerns about their testimony, wouldn't you?

22 JOSEPH CHETSKO: Most likely you would.

23 ATTY. BECKER: All right. And in that

1 scenario you wouldn't require the driver of the pickup truck
2 to testify, would you? You wouldn't sit here as a juror and
3 say, "Well, the driver of that pickup truck, he should have
4 testified, because if he doesn't testify I'm going to find
5 him guilty?" You wouldn't be of that mind set, would you?

6 JOSEPH CHETSKO: No, because --

7 ATTY. BECKER: Because he's got a
8 presumption of innocence, right?

9 JOSEPH CHETSKO: Right.

10 ATTY. BECKER: And he's got his fifth
11 amendment, and she does as well, correct?

12 JOSEPH CHETSKO: Yes, yes.

13 ATTY. BECKER: So you may not hear from
14 her. As much as you may want to hear two sides of the story,
15 you may not hear two sides of the story, correct?

16 JOSEPH CHETSKO: That's true.

17 ATTY. BECKER: You will not hold that
18 against her if she does not take the witness stand?

19 JOSEPH CHETSKO: No.

20 ATTY. BECKER: And you will not consider
21 it for whether she's guilty or not guilty?

22 JOSEPH CHETSKO: No.

23 ATTY. BECKER: All right. And that's what

1 that presumption of innocence means, you understand that?

2 JOSEPH CHETSKO: Oh, yes, I understand.

3 ATTY. BECKER: All right. Now, the next
4 concept we have to deal with is the concept called reasonable
5 doubt, and when I was in law school one of my professors my
6 first year of law school referred to reasonable doubt and all
7 standards of proof really as like a cup of water. Reasonable
8 doubt is reason, reason and common sense. It's based on
9 reason and common sense. It is not all doubt. All doubt is
10 the top of this cup so that if I put another drop of water in
11 there it spills out. Mr. Bailey and I cannot prove anything
12 to you beyond all doubt.

13 I'm standing here today with a wedding ring on. I
14 can probably reach into my wallet and put down pictures of my
15 wife and kids. I can probably call my wife today and have
16 her come down and meet me for lunch and have my four children
17 brought down here and bring them into this courtroom, but --
18 and that's probably reasonable doubt that I'm married, right?
19 I've got the ring. I've got pictures of them. They came
20 down here. My kids may wave and say, "Hi, daddy." That's
21 probably going to prove to you that I'm married and have
22 kids, right?

23 JOSEPH CHETSKO: Yes.

1 ATTY. BECKER: Now, some people may want
2 me to produce a marriage certificate, so maybe I'll have my
3 wife bring down the marriage certificate, right?

4 JOSEPH CHETSKO: I suppose you would.

5 ATTY. BECKER: Okay. And there may be
6 other jurors who may want to see our wedding pictures so I
7 may have to have her bring down the wedding pictures, the
8 license, and maybe even the pronouncement from the Methodist
9 church that we were married in the church to prove all of
10 that. But even with all of that there may be a little bit of
11 doubt as to whether any of that stuff is real, right? I
12 mean, you could always imagine, well, maybe they're just
13 trying to pull a big con game on me. Maybe Becker went down
14 to the pawn shop, bought a ring today, stole some pictures of
15 his neighbors' kids, had his neighbor's wife come down with
16 her kids, brought in some photographs of him and this woman
17 when they were at some costume dinner and they were, you
18 know, acting like bride and groom, and maybe they forged
19 these documents and printed them out on one of these fancy
20 laser printer. I mean, there's always room for some doubt,
21 right?

22 JOSEPH CHETSKO: Yes. That would be great
23 lengths though.

1 ATTY. BECKER: Right, and it would be. So
2 you're not going to hold the State -- reasonable doubt is
3 basically going to be some point near the top but not to the
4 top, you understand that simple concept?

5 JOSEPH CHETSKO: Yes.

6 ATTY. BECKER: You'll be able to find this
7 defendant guilty beyond reasonable doubt, which is somewhere
8 near the lip of this cup, and not make us prove our case
9 beyond all possible doubt because I don't think we can prove
10 anything to you beyond all possible doubt? Would you agree
11 with that?

12 JOSEPH CHETSKO: Yes.

13 ATTY. BECKER: And by the same token, if
14 we get to that second phase, which is the penalty phase where
15 you would determine whether the death penalty was
16 appropriate, you would only hold the State to the standard of
17 reasonable doubt as to whether or not the death penalty was
18 warranted, you would not hold us to all possible doubt as to
19 whether that was warranted?

20 JOSEPH CHETSKO: Yes.

21 ATTY. BECKER: All right. Now, I noticed
22 that you are a member of the Catholic faith and obviously the
23 Catholic church has pronounced that they are opposed to the

1 death penalty. Do you follow those views or do you -- are
2 you able to separate those views?

3 JOSEPH CHETSKO: Yes.

4 ATTY. BECKER: Okay. This case involves
5 two counts of aggravated murder even though only one person
6 is deceased. The reason that that is charged that way is
7 there are two theories of the case and the Court is going to
8 tell you you can find her guilty of none of them, some of
9 them or all of them. So in reality you could find her not
10 guilty of aggravated murder, you could find her guilty of one
11 or the other, or you could find her guilty of both counts if
12 you think that both theories fit the case. Do you have any
13 problem with that?

14 JOSEPH CHETSKO: No.

15 ATTY. BECKER: This case, of course, is a
16 very serious case because it involves the death of one
17 individual, we know that, because there's a charge of murder,
18 and it involves the potential death of this defendant because
19 if we get to that second phase and if we're able to prove our
20 case, obviously the death penalty is an option. And now that
21 Ohio has begun to actually exercise that it may be a real
22 reality for her some day. Do you feel that you would be the
23 type of person that would be sympathetic either to Mr. Robert

1 Fingerhut, who is the deceased person in this case, and his
2 family or to the defendant because death has occurred in this
3 case or death may occur in this case?

4 JOSEPH CHETSKO: I think I'm partial to
5 the crime.

6 ATTY. BECKER: You're partial to what?

7 JOSEPH CHETSKO: To the crime committed.

8 ATTY. BECKER: I'm not sure if I
9 understand your answer.

10 JOSEPH CHETSKO: Well, if you can prove
11 that there was a murder, like the murder.

12 ATTY. BECKER: Right.

13 JOSEPH CHETSKO: And you're calling for
14 the death penalty, I could go with that.

15 ATTY. BECKER: But you would still --
16 well, --

17 JOSEPH CHETSKO: I would not be partial to
18 either side is what you want to know.

19 ATTY. BECKER: Okay. All right. You
20 would follow the law and the facts I guess is what you're
21 saying?

22 JOSEPH CHETSKO: (Nods head
23 affirmatively.)

1 ATTY. BECKER: All right. This case
2 involves a situation and Mr. Bailey and I are going to be
3 very honest with you, the allegation in this case is that she
4 is an aider and abettor or a helper. She is not alleged to
5 be the trigger person. Does that change anything for you in
6 terms of whether or not you feel she should be subject to the
7 death penalty if we're able to prove that case the first
8 time?

9 JOSEPH CHETSKO: No.

10 ATTY. BECKER: So even you believe if she
11 was an aider and abettor and it was proven that she was an
12 aider and abetter and a helper, if the law warranted it and
13 the facts permitted it, you would be able to sign a verdict
14 calling for the death penalty?

15 JOSEPH CHETSKO: Yes.

16 ATTY. BECKER: All right. Every case
17 involves, every criminal case, just about every civil case as
18 well, has some element of what we call circumstantial
19 evidence. I'm not going to be presumptuous, but I'm assuming
20 you've heard of that term before, correct?

21 JOSEPH CHETSKO: Yeah.

22 ATTY. BECKER: The Court will tell you
23 that circumstantial evidence is the same as direct evidence

1 and direct evidence is basically if I'm sitting here in the
2 courthouse and I see some guy rob somebody out here in
3 courthouse square. I know who he is, I see him pull out a
4 gun, I see him point it at the guy's head, I see the guy give
5 him his wallet, I see the guy run away. That's direct
6 evidence. I could come into the courtroom and say on May 9th
7 at approximately 10:30, 10:45 a.m. I was voir diring a
8 witness and I happened to look out the window and I saw this
9 horrible crime; that's direct evidence you would agree,
10 correct?

11 JOSEPH CHETSKO: Yes.

12 ATTY. BECKER: Circumstantial evidence are
13 things such as fingerprints, DNA, perhaps things that lead
14 you to a conclusion. If I witnessed this same -- well, let's
15 say I don't witness this. I'm standing here and I look out
16 and I see a guy going like this, his wallet is on the ground,
17 the police are there, the police show up, and the guy gives
18 him his explanation and they take the wallet and they
19 fingerprint it and they find the defendant's fingerprints. I
20 never saw the guy's wallet being taken out. The guy who does
21 the fingerprinting examination never saw it. He just dusted
22 the thing for fingerprints and found fingerprints. That's
23 circumstantial evidence. You can assume, I'm guessing, that

1 the person who reached in and touched that wallet who is now
2 alleged to be the defendant actually touched it, right, his
3 fingerprints were found on it?

4 JOSEPH CHETSKO: (Nods head
5 affirmatively.)

6 ATTY. BECKER: Often times in rape cases
7 women are raped, they go, they report it, they may not know
8 who the assailant is. They extract DNA or they run a DNA
9 test and they put it in a database and they may be able to
10 match that DNA to another defendant or to a person, a known
11 suspect. Even though the woman doesn't know who committed
12 the crime, that DNA evidence, that circumstantial evidence,
13 links him to the crime, correct?

14 JOSEPH CHETSKO: Yes.

15 ATTY. BECKER: All right. You don't have
16 a problem determining guilt or innocence or, if we get to
17 that second phase, whether the death penalty is appropriate
18 based upon circumstantial evidence such as DNA, fingerprints
19 or anything like that?

20 JOSEPH CHETSKO: If there's enough of it.

21 ATTY. BECKER: All right. So you could
22 find first guilt and then secondly that the death penalty
23 would be warranted?

1 JOSEPH CHETSKO: Yes.

2 ATTY. BECKER: All right. Mr. Chetsko, I
3 just have one last area I want to finish up with you on. I'm
4 assuming throughout your life you've heard stories of
5 criminals that have done dumb things, they've done things
6 that are ridiculous. They've made plans to commit a crime
7 and then they end up getting caught doing it for some stupid
8 reason, correct?

9 JOSEPH CHETSKO: I suppose.

10 ATTY. BECKER: All right. Well, just the
11 other day in the newspaper we had an individual who
12 apparently decided to take some photographs of himself with a
13 small child in a closed house. The door was closed, the
14 bedroom was closed, or the bathroom, wherever they were
15 taken, and he took some lewd photographs of himself. He
16 probably made sure his wife was gone, nobody was around. He
17 had this small child there, he took some photographs in a
18 very criminal way and a very sexually explicit way of these
19 small children and himself. He went to all this planning to
20 make sure his wife was gone, the neighbors were gone. He
21 pulled the blinds down and he locked the door to the house.
22 He closed the bathroom door. He made sure that there was no
23 one around and he took these photographs, and then like a big

1 dummy he went to Kmart and had them developed. You've heard,
2 you know, the saying the best laid plans can go astray?

3 JOSEPH CHETSKO: I heard the phrase, yes.

4 ATTY. BECKER: Okay. You agree that that
5 could happen in a case even involving a possible homicide?

6 JOSEPH CHETSKO: Yes.

7 ATTY. BECKER: People can make dumb
8 mistakes like that?

9 JOSEPH CHETSKO: Yes.

10 ATTY. BECKER: Okay. Mr. Chetsko, I want
11 to thank you very much for your time here this morning. I
12 also want to thank you and apologize for keeping you here
13 yesterday, and I do apologize and I think all of us here
14 apologize for keeping you here and wasting your time because
15 it was very difficult, I'm sure, for you to be here not
16 knowing why, what was going on and what the delay was. This
17 case may involve delays. It may involve you being here some
18 day and maybe only hearing two or three hours of testimony
19 rather than six or seven hours of testimony. Sometimes those
20 things happen.

21 JOSEPH CHETSKO: I have no problem with
22 that. It's just if --

23 ATTY. BECKER: Okay.

1 JOSEPH CHETSKO: I have no problem with
2 that.

3 ATTY. BECKER: Okay. You believe and you
4 don't think there's any other reason why you could not serve
5 as a juror in this case?

6 JOSEPH CHETSKO: Not at the moment. I
7 don't know what the future will bring. I can't -- you know,
8 I don't know.

9 ATTY. BECKER: Well, do you have anything
10 pressing at home?

11 JOSEPH CHETSKO: No.

12 ATTY. BECKER: Any issues that may cause
13 you to have to leave?

14 JOSEPH CHETSKO: Nothing that I can't work
15 around. I have no problem with that.

16 ATTY. BECKER: All right. And you'd be
17 glad to serve as an alternate juror in this case?

18 JOSEPH CHETSKO: I have no problem, yes.

19 ATTY. BECKER: Okay. I want to thank you
20 very much. Mr. Ingram or Mr. Juhasz now are going to ask you
21 some questions. Again, thank you, sir.

22 THE COURT: I do want to ask one thing.
23 You own a farm?

1 JOSEPH CHETSKO: Pardon?

2 THE COURT: Do you farm?

3 JOSEPH CHETSKO: Yes.

4 THE COURT: You do? You have your crops
5 all in?

6 JOSEPH CHETSKO: Well, I'm ready to go as
7 soon as the ground dries up. I mean, I don't have that much
8 land. I can do what I got to do in eight hours.

9 THE COURT: This won't interfere with you
10 doing that?

11 JOSEPH CHETSKO: No.

12 THE COURT: Okay. Go ahead.

13 ATTY. INGRAM: Good morning, sir. How are
14 you?

15 JOSEPH CHETSKO: Well, I hope I'm fine.

16 ATTY. INGRAM: You need a glass of water?

17 JOSEPH CHETSKO: No, I don't. I'm fine.

18 ATTY. INGRAM: If you want coffee I think
19 I can --

20 JOSEPH CHETSKO: I don't drink coffee,
21 sir.

22 ATTY. INGRAM: You don't drink coffee?

23 JOSEPH CHETSKO: No.

1 ATTY. INGRAM: How do you get your
2 caffeine?

3 JOSEPH CHETSKO: I don't.

4 ATTY. INGRAM: I wouldn't be able to live
5 without caffeine. My name is Jerry Ingram, this is John
6 Juhasz, and we share the responsibility of representing Donna
7 Roberts who is on trial for her life. As I'm sure you can
8 imagine, we take our responsibility to Donna very seriously
9 and feel we should take every reasonable precaution in
10 selecting a fair-minded jury, basically the same type of jury
11 that you or I would want if we were on trial. No more, no
12 less.

13 JOSEPH CHETSKO: That's right.

14 ATTY. INGRAM: Does that sound fair enough
15 to you?

16 JOSEPH CHETSKO: Fair enough to me.

17 ATTY. INGRAM: This is the only
18 opportunity that we'll ever have to get to talk to one
19 another and determine whether you're comfortable sitting on
20 this panel. I'm allowed to talk to you but, more
21 importantly, you're allowed to talk to me. And actually
22 you're the one who is supposed to be doing most of the
23 talking, but lawyers by training or whatever have a tendency

1 to monopolize the conversation. So whenever there's
2 something you would like to discuss or something you would
3 like to volunteer, why don't you do that and it will minimize
4 my tendency to monopolize the conversation.

5 JOSEPH CHETSKO: Just ask the questions
6 and I'll give you the answers.

7 ATTY. INGRAM: Okay. We're interviewing
8 you today for the job of being a trial juror, except when you
9 go apply for a job job you pick. When you went to Delphi you
10 chose to go apply for that job. Here we spun the jury wheel
11 and we called you down here, you had no choice. We're
12 interviewing you today for one of the most important jobs
13 there is, finding the truth and perhaps determining the fate
14 of another human being. How do you feel about being asked to
15 assume that responsibility?

16 JOSEPH CHETSKO: I consider it quite a
17 responsibility. I mean, it's a civic duty I guess. You
18 know, when you get called you go.

19 ATTY. INGRAM: Okay. There are no right
20 or wrong answers in this exchange, and if at any point in
21 time my question doesn't make sense to you, and that might
22 happen, that's my fault. That means I failed to make myself
23 clear, so if that happens will you let me know?

1 JOSEPH CHETSKO: Sure will.

2 ATTY. INGRAM: In a nutshell this case
3 boils down to the government's allegation that Donna Roberts
4 plotted or conspired with a male companion, Nate Jackson, to
5 cause the death of Robert Fingerhut. Donna and Robert were
6 divorced but they continued to live together in Howland
7 Township and work together at the Greyhound bus stations in
8 Warren and Youngstown. You understand that this trial is
9 about the guilt or innocence of one person and one person
10 only?

11 JOSEPH CHETSKO: Yes.

12 ATTY. INGRAM: And that's Donna Roberts.

13 JOSEPH CHETSKO: (Nods head
14 affirmatively.)

15 ATTY. INGRAM: Throughout the course of
16 these proceedings you'll hear the name Nate Jackson and you
17 may conclude that Mr. Jackson did what the State claims he
18 did. That's not what you are here to determine. You're here
19 to determine whether Donna helped him do it. You got a
20 handle on that?

21 JOSEPH CHETSKO: Yes.

22 ATTY. INGRAM: And the State has the
23 burden of proving that she was a helper, and the legal term

1 for helper is accomplice, aider and abettor, but we'll use
2 the word helper. They have to prove that Donna was a helper
3 beyond a reasonable doubt. Will you hold them to that
4 burden?

5 JOSEPH CHETSKO: Yes.

6 ATTY. INGRAM: Now, in support of its
7 allegation that Donna participated in the death of Robert
8 Fingerhut the State will present during this trial some
9 letters and tape recorded telephone conversations between
10 Donna and Nate Jackson. Some of this evidence is sexually
11 explicit in nature, and to be downright candid with you, some
12 of it's offensive. Even though you may be offended by the
13 sexually explicit nature of some of this evidence, you're
14 sort of going to have to rise above that offense because your
15 job responsibility will require you to test the evidence to
16 determine whether it ties Donna to this offense. Do you
17 think you're up to that?

18 JOSEPH CHETSKO: Yes.

19 ATTY. INGRAM: Do you have any feelings
20 about interracial relationships?

21 JOSEPH CHETSKO: No, I don't.

22 ATTY. INGRAM: And if you found in this
23 case that there was an interracial relationship would that

1 bother you at all?

2 JOSEPH CHETSKO: No.

3 ATTY. INGRAM: Donna denies that she
4 participated by conspiracy, plot or otherwise in the death of
5 Robert Fingerhut. Would you have the courage to acquit, that
6 is vote not guilty, if you thought a not guilty verdict was
7 warranted by the evidence?

8 JOSEPH CHETSKO: Yes.

9 ATTY. INGRAM: Many times Mr. Becker asked
10 you if you were willing to sign verdict forms. Sometimes he
11 asked you about verdict forms relating to guilt or innocence
12 and on other occasions he asked you about verdict forms
13 relating to punishment. Do you recall those questions?

14 JOSEPH CHETSKO: Yes.

15 ATTY. INGRAM: You understand no one is
16 asking you to prejudge this case?

17 JOSEPH CHETSKO: Right.

18 ATTY. INGRAM: We got to talk about
19 punishments. Before we do that there's a concern I have I
20 want to explain to you. All of us have stood up here and
21 asked you your views about the death penalty, the judge, the
22 prosecutor, and myself, and I'm a little bit concerned that
23 we're asking you about punishment when you don't even know if

1 the person we're talking about has done anything wrong or
2 not. To me it seems a lot like putting the cart before the
3 horse. Do you see what I mean by that old adage?

4 JOSEPH CHETSKO: Well, if you want me to
5 tell you, I'm telling you that the prosecutor unequivocally,
6 the evidence says the person is guilty, I have no problem
7 with the death penalty.

8 ATTY. INGRAM: Okay. You know that this
9 is an aggravated murder case?

10 JOSEPH CHETSKO: Aggravated, yes.

11 ATTY. INGRAM: And we're going to talk
12 about one of the counts. One of the counts is prior
13 calculation and design aggravated murder. It's premeditated
14 murder, advanced planning. Is it your view that if they
15 prove her guilty that you go right to the death penalty?

16 JOSEPH CHETSKO: It has to -- no, I would
17 not go right to the death penalty. It has to be proven that
18 is exactly the way it is that they're saying it is for the
19 death penalty.

20 ATTY. INGRAM: Okay. Did you read the
21 preliminary instruction, the five or six pages downstairs?

22 JOSEPH CHETSKO: Right.

23 ATTY. INGRAM: That's some pretty hard

1 stuff, and if we asked half the lawyers in town to read it,
2 half the lawyers wouldn't be able to understand it because
3 they don't do that kind of stuff, they're not familiar with
4 that kind of stuff. Did it make sense to you, those
5 preliminary instructions?

6 JOSEPH CHETSKO: Yes.

7 ATTY. INGRAM: You think you have a handle
8 on the procedure?

9 JOSEPH CHETSKO: Yeah.

10 ATTY. INGRAM: Okay. How do you feel
11 about the death penalty as a sentence that we use in this
12 country?

13 JOSEPH CHETSKO: I feel it's being used as
14 a deterrent. I don't know if it's doing its job, but that's
15 what it's supposed to be doing.

16 ATTY. INGRAM: Okay. We've recently had
17 some renewed debate in this country about whether we should
18 even have the death penalty or not, and like the State of
19 Illinois, Illinois put a moratorium on executions. Did you
20 hear anything about that debate?

21 JOSEPH CHETSKO: No. I just know the
22 governor, before he went out of office he put a moratorium
23 on.

1 ATTY. INGRAM: Did you have cause to think
2 about what that governor did before he went out of office?
3 Did you think that it was a wise thing, a crazy thing or --

4 JOSEPH CHETSKO: I felt that he thought it
5 was moral, that there was some discretion there, and that he
6 put his political life on the line.

7 ATTY. INGRAM: And it takes a lot for a
8 politician to put his political life on the line. Also there
9 was a supreme court decision recently that prohibited the
10 execution of the mentally challenged. Did you read or hear
11 anything about that decision?

12 JOSEPH CHETSKO: No.

13 ATTY. INGRAM: Did you ever hear anyone
14 say that they are not in favor of life imprisonment because
15 they don't believe that we, the taxpayers, should have to pay
16 to house someone for the rest of their life?

17 JOSEPH CHETSKO: Yeah, I heard a lot of
18 people say that.

19 ATTY. INGRAM: Have you ever said it?

20 JOSEPH CHETSKO: No.

21 ATTY. INGRAM: Do you have any feelings
22 about this cost issue?

23 JOSEPH CHETSKO: Cost?

1 ATTY. INGRAM: Yes.

2 JOSEPH CHETSKO: No.

3 ATTY. INGRAM: In murder cases how do you
4 feel about life imprisonment as an alternative to the death
5 penalty, and I understand that's a hard question?

6 JOSEPH CHETSKO: Well, I feel that maybe
7 sometimes it's probably worse than the death if they get no
8 parole.

9 ATTY. INGRAM: In those preliminary
10 instructions downstairs there were four sentencing options
11 that were described in there. Do you have a handle on those?

12 JOSEPH CHETSKO: Yeah.

13 ATTY. INGRAM: You understand that life
14 without parole is indeed life without parole?

15 JOSEPH CHETSKO: I would assume. That's
16 what it says. I assume that that's what it's going to be.

17 ATTY. INGRAM: That's what it is. You go
18 in, you get out in a box. And there are two others, the one
19 with the 30 and the 25. You're not even eligible to go to
20 the parole board until 30 or 25 years.

21 JOSEPH CHETSKO: Right.

22 ATTY. INGRAM: And even then you may or
23 may not get out. You got that?

1 JOSEPH CHETSKO: Right.

2 ATTY. INGRAM: When you were talking with
3 Mr. Becker he asked you a question and you responded, and I
4 don't even remember what the question was, I'm sorry, but
5 your response was "I'm partial to the crime. If you can
6 prove it, then I can go for the death penalty." Do you
7 recall giving that answer?

8 JOSEPH CHETSKO: Yeah.

9 ATTY. INGRAM: Do you remember what the
10 question was that elicited that answer because I don't?

11 JOSEPH CHETSKO: He wanted to know if they
12 committed a murder if I could commit the death penalty. If
13 the murder -- if the crime fit the sentence I guess is what
14 he wanted to know.

15 ATTY. INGRAM: Okay.

16 JOSEPH CHETSKO: If they could prove that
17 the crime was committed in order for the death penalty, I
18 could go along with it.

19 ATTY. INGRAM: What did you mean by the
20 words "I'm partial to the crime"?

21 JOSEPH CHETSKO: Well, what I meant to
22 say, if they make the case I can go to the death penalty.

23 ATTY. INGRAM: Okay. And let's talk about

1 that. You understand that this is potentially and
2 potentially only a two stage process?

3 JOSEPH CHETSKO: Right.

4 ATTY. INGRAM: Because at the first stage
5 the issue is Donna's guilt or innocence, correct?

6 JOSEPH CHETSKO: Right.

7 ATTY. INGRAM: And if you and the rest of
8 the jurors find her not guilty, what happens?

9 JOSEPH CHETSKO: Nothing. It's over.

10 ATTY. INGRAM: It's over. We go home,
11 don't we? If you get to a second phase, if we ever get
12 there, at that point the State also has the burden of proof.
13 The burden of proof at the second phase is to convince you
14 that certain aggravating circumstances, and the judge will
15 describe those for you, outweigh any mitigating factors
16 beyond a reasonable doubt and that death is the appropriate
17 penalty. You understand me there?

18 JOSEPH CHETSKO: Yes.

19 ATTY. INGRAM: So at the second phase
20 basically it's the State's burden, if we ever get to a second
21 phase, to firmly convince you beyond a reasonable doubt that
22 death is the appropriate penalty.

23 JOSEPH CHETSKO: Yes.

1 ATTY. INGRAM: Is that what you meant when
2 you were talking about --

3 JOSEPH CHETSKO: Yes.

4 ATTY. INGRAM: I'm going to make up
5 another case, not this case, because we're going to go
6 directly to a second phase, and I think I'm going to use some
7 sad events in Youngstown to frame my made-up case. There's
8 someone who has been convicted of premeditated murder of a
9 policeman in the line of duty. Aggravated murder of a
10 policeman in the line of duty is a capital offense so there
11 would be a verdict of guilty of aggravated murder and a
12 verdict of guilty of a specification that there was a police
13 officer in the line of duty, so a second phase juror would
14 then have to determine appropriate punishment. Are you with
15 me?

16 JOSEPH CHETSKO: Yeah.

17 ATTY. INGRAM: In that case, as I read
18 your answers in the questionnaire, you would favor the death
19 penalty because a policeman was killed in the line of duty?

20 JOSEPH CHETSKO: Right.

21 ATTY. INGRAM: And you would also, as I
22 read your answers in the questionnaire, would in a second
23 phase favor the death penalty if a child was killed?

1 JOSEPH CHETSKO: Yes.

2 ATTY. INGRAM: Are there any other cases
3 where you would go into a second phase favoring the death
4 penalty?

5 JOSEPH CHETSKO: I think it would be some
6 kind of heinous crime, some kind of terrible crime.

7 ATTY. INGRAM: Terrible crime.

8 JOSEPH CHETSKO: Against society.

9 ATTY. INGRAM: If I pressed you on whether
10 you could think about a heinous or a terrible crime --

11 JOSEPH CHETSKO: Pardon me. Could you
12 repeat that?

13 ATTY. INGRAM: If I pressed you for an
14 example of a heinous or a terrible crime could you take some
15 time and think about it and try to see if you can give me any
16 examples?

17 JOSEPH CHETSKO: Well, it's like we got
18 this terrorist group, you know, bombing our buildings and our
19 citizens and innocent people. They just want to live their
20 life and this guy wants to destroy it, right?

21 ATTY. INGRAM: Yes.

22 JOSEPH CHETSKO: Well, to me he took, you
23 know, he's doing the worst thing in the world, he's depriving

1 me of my freedom.

2 ATTY. INGRAM: Okay. Let's go back.

3 You all right? We have to take care of the court
4 reporter.

5 Even in a case with a policeman and a child a second
6 phase juror would have to go into that second phase with all
7 four sentences equal in his or her mind. You could not go in
8 there favoring one or another. Do you understand that?

9 JOSEPH CHETSKO: Yes.

10 ATTY. INGRAM: Okay. If we ever get to a
11 second phase in this case you would have to start with all
12 four sentences equal in your mind.

13 JOSEPH CHETSKO: Correct.

14 ATTY. INGRAM: Would you have any problem
15 doing that?

16 JOSEPH CHETSKO: No, if -- no.

17 ATTY. INGRAM: Fair enough. Have you ever
18 donated any time, money or services to a political campaign
19 or issue?

20 JOSEPH CHETSKO: No.

21 ATTY. INGRAM: Well, you'll laugh at a
22 couple of these then. Do you belong to any group or
23 organization which is active in any political matter?

1 JOSEPH CHETSKO: No.

2 ATTY. INGRAM: In the last five years or
3 so do you recall signing a petition on any public issue?

4 JOSEPH CHETSKO: No.

5 ATTY. INGRAM: You were in the Reserves
6 for 15 years?

7 JOSEPH CHETSKO: Correct.

8 ATTY. INGRAM: What did you do in the
9 Reserves?

10 JOSEPH CHETSKO: A variety of things.
11 First I was a combat engineer. From there I went to supply,
12 supply outfit, and then last was a medical outfit.

13 ATTY. INGRAM: To one degree or another we
14 have a crime problem underfoot in this country. Do you have
15 any ideas what we, and by we I mean society as a whole, can
16 do to at least begin addressing that problem?

17 JOSEPH CHETSKO: Society as a whole.
18 Yeah, we could create some jobs.

19 ATTY. INGRAM: Okay. You talked with
20 Mr. Becker about sympathy, and I actually think that, now
21 that I'm giving myself a frame of reference, I think it was
22 when you were talking about sympathy that that answer came
23 out about "I'm", what was it, "partial to the crime" or

1 something? You would agree with me that it is a court of
2 law, not a court of sympathy?

3 JOSEPH CHETSKO: Right.

4 ATTY. INGRAM: So sympathy for no one
5 should affect your evaluation of the evidence.

6 JOSEPH CHETSKO: Right. The evidence will
7 speak for itself.

8 ATTY. INGRAM: So you can't feel sorry for
9 her.

10 JOSEPH CHETSKO: No.

11 ATTY. INGRAM: And there is a dead person
12 here. You can't feel sorry for the dead person either. You
13 got that?

14 JOSEPH CHETSKO: Right.

15 ATTY. INGRAM: But you're going to see
16 evidence; crime scene photographs, coroner's photographs,
17 you'll hear coroner testimony. And some of this evidence may
18 evoke a natural emotional response from you, maybe sympathy
19 because you might feel bad, or maybe anger, how could someone
20 do this? But whether this evidence evokes an emotional
21 response or not, you have to rise above that emotional
22 response to test the evidence to determine whether it ties
23 Donna to this offense. Do you see what I mean, No. 1?

1 JOSEPH CHETSKO: Yes.

2 ATTY. INGRAM: Do you think you're up to
3 that?

4 JOSEPH CHETSKO: Yeah.

5 ATTY. INGRAM: That's one of those things
6 that may be easier said than done.

7 JOSEPH CHETSKO: I don't doubt it.

8 ATTY. INGRAM: About 220 -- and I'm going
9 to sound like a civics teacher here for a while. I apologize
10 about that, but these things mean a lot to me and I think we
11 have to talk about this. About 225 years ago our forefathers
12 declared independence, fought and died so that we -- so that
13 they could be free and we could be free. After the
14 revolution they wrote laws that were designed to restrict or
15 curb the power of government. One of those laws was the
16 presumption of innocence. If you want to give a government
17 broader or more authority would you create a presumption of
18 innocence or a presumption of guilt?

19 JOSEPH CHETSKO: Guilt.

20 ATTY. INGRAM: And our forefathers in
21 addition to the presumption of innocence and -- well,
22 actually as part and parcel to it, said that okay, if the
23 government charges someone with a crime not only is that

1 person presumed innocent, the government bears the burden of
2 proving it. Do you have any problem with either of those
3 concepts?

4 JOSEPH CHETSKO: No.

5 ATTY. INGRAM: Let me tell you why I ask
6 that question. Some people do have problems with those
7 concepts. I have some friends who are no longer concerned
8 about restricting or curbing governmental authority, they're
9 concerned about the crime problem, and one of the ways they
10 would deal with the crime problem is to replace the
11 presumption of innocence with a presumption of guilt. And
12 it's okay that they feel that way, but if they truly feel
13 that way and could not set aside those feelings they would
14 not make good trial jurors. Do you see what I mean?

15 JOSEPH CHETSKO: Yeah, sure. It becomes a
16 police state.

17 ATTY. INGRAM: That's right. Now, because
18 the sole burden of proof is on these guys, basically it's
19 time for them to put up or shut up. The State levels these
20 allegations, now we're here to see if they can prove them.
21 You got that?

22 JOSEPH CHETSKO: Yeah.

23 ATTY. INGRAM: Donna doesn't have to

1 testify and the judge will tell you that if she elects not to
2 testify that you can't hold that against her or consider it
3 for any purpose. Let's go back to our police state. If you
4 really want to give government a lot of authority you enable
5 them to force people to testify. You see what I mean?

6 JOSEPH CHETSKO: Yeah.

7 ATTY. INGRAM: But I sense, and maybe I'm
8 wrong, and when I'm wrong you're supposed to tell me, I sense
9 you have a bit of a problem with the fact that maybe a
10 defendant doesn't testify.

11 JOSEPH CHETSKO: No, I have no problem.
12 That's their right.

13 ATTY. INGRAM: You recall Mr. Becker
14 discussing proof with you and using a glass?

15 JOSEPH CHETSKO: Yeah.

16 ATTY. INGRAM: If Donna doesn't testify
17 that isn't anything that goes into that container. You see
18 what I mean?

19 JOSEPH CHETSKO: Well, I'll go back to my
20 original answer, they have -- if you want -- they have to
21 prove without a reasonable doubt that she's guilty.

22 ATTY. INGRAM: Okay. Now, if --

23 JOSEPH CHETSKO: And I guess I should say

1 you have to prove, counterprove that she's not guilty.

2 ATTY. INGRAM: No, I don't. I don't have
3 to prove that she's not guilty.

4 JOSEPH CHETSKO: Oh, okay. I take that
5 back. Let's say if they have witnesses, you should question
6 the witnesses in a manner to prove that they are wrong.

7 ATTY. INGRAM: That's a good way of
8 looking at it. And if we go back to that glass that
9 Mr. Becker used, when a witness testifies maybe you pour
10 something into that glass when the prosecutor, when the
11 prosecution is asking that witness questions. Then when the
12 defense lawyers come up and ask questions maybe you take some
13 of what you put in the glass out of the glass. You see what
14 I mean?

15 JOSEPH CHETSKO: Correct.

16 ATTY. INGRAM: Is that what you meant?

17 JOSEPH CHETSKO: Yeah.

18 ATTY. INGRAM: If Donna does testify she's
19 a witness just like any other witness so you would have to
20 use the same rules for determining whether you believe her as
21 you apply to other witnesses.

22 JOSEPH CHETSKO: (Nods head
23 affirmatively.)

1 ATTY. INGRAM: She's the defendant, she
2 obviously has an interest or a stake in the outcome of the
3 case.

4 JOSEPH CHETSKO: Oh, yeah.

5 ATTY. INGRAM: And the judge will tell you
6 that that's one of the things you can consider in determining
7 whether or not you believe a witness, is whether the witness
8 has an interest or a stake in the outcome of the case. But
9 to be fair about it then, if you consider that with her you
10 should consider that with any other witness you find has an
11 interest or a stake in the outcome of the case.

12 JOSEPH CHETSKO: Correct.

13 ATTY. INGRAM: You see what I'm getting
14 at?

15 JOSEPH CHETSKO: Oh, yeah.

16 ATTY. INGRAM: And if you found another
17 witness had something to gain -- the judge at the end of the
18 case will give you a whole set of rules that you should, or
19 standards that you should apply to everyone who testifies.
20 That's his job. I don't want to step on his toes. One of
21 the things he's going to tell you about though is, and only
22 lawyers or legislators could say things like this, the tests
23 of truthfulness that you apply in your daily lives. Over the

1 years whether it's in the Reserves, whether it's at Delphi or
2 whether it's at home, you've had occasion or occasions to
3 determine whether someone is being straight with you or
4 trying to hoodwink you?

5 JOSEPH CHETSKO: Oh, yeah, every day.

6 ATTY. INGRAM: And over the years you've
7 developed an intuitive sense, a sixth sense that helps you in
8 making that determination. I don't know what yours is. I
9 don't even know that I know what mine is. I know I have one,
10 but we all have one. You understand?

11 JOSEPH CHETSKO: Yes.

12 ATTY. INGRAM: You're supposed to bring
13 that sixth sense, that intuitive sense in here and apply it
14 to everybody that testifies. Will you do that?

15 JOSEPH CHETSKO: Yes.

16 ATTY. INGRAM: And you have -- I don't
17 know what I did with my notes. You know -- Bill Bailey is
18 a --

19 JOSEPH CHETSKO: Cousin.

20 ATTY. INGRAM: Cousin. And I know he's
21 with the YPD.

22 JOSEPH CHETSKO: Yeah.

23 ATTY. INGRAM: You will have some

1 policemen testify and policemen are human beings.

2 JOSEPH CHETSKO: Right.

3 ATTY. INGRAM: You're going to have to
4 judge the credibility of police officers just as you would
5 anyone else.

6 You ever said to yourself I want to give, I'm going
7 to give a coworker or a friend or maybe even Leanna the
8 benefit of the doubt in regard to anything?

9 JOSEPH CHETSKO: Yes.

10 ATTY. INGRAM: Well, when you said that to
11 yourself was the doubts you were giving someone the benefit
12 of a reasonable or an unreasonable doubt?

13 JOSEPH CHETSKO: Probably reasonable.

14 ATTY. INGRAM: What?

15 JOSEPH CHETSKO: Reasonable.

16 ATTY. INGRAM: Because we intuitively know
17 what's reasonable and what's unreasonable, don't we?

18 JOSEPH CHETSKO: Yeah.

19 ATTY. INGRAM: Proof beyond a reasonable
20 doubt is based on reason and common sense. And the judge
21 will tell you and he'll give you a more detailed definition
22 that proof beyond a reasonable doubt requires that you be
23 firmly convinced and is proof of such character that you

1 would be willing to rely and act upon it in the most
2 important of your own affairs.

3 JOSEPH CHETSKO: Right.

4 ATTY. INGRAM: You've made some important
5 decisions in your life, probably a lot of them. Do you ever
6 make a checklist with a line down the middle with the good
7 things on one side, the bad things on the other, the
8 positives, the negatives?

9 JOSEPH CHETSKO: No.

10 ATTY. INGRAM: Well, when you make an
11 important decision you balance those factors that are in
12 favor of the decision and those factors that are against the
13 decision, don't you?

14 JOSEPH CHETSKO: Risk, yes.

15 ATTY. INGRAM: And only when you're firmly
16 convinced that the decision is the right thing for you do you
17 go ahead and make important decisions, correct?

18 JOSEPH CHETSKO: Not all the time.

19 ATTY. INGRAM: Not all the time. That's
20 the standard in this case, firmly convinced. Will you hold
21 the State to firmly convincing you?

22 JOSEPH CHETSKO: Yes.

23 ATTY. INGRAM: And Mr. Bailey says it's

1 firmly convincing you to a moral certainty, and only you can
2 answer the question of where that line is on that cup that
3 Mr. Becker was talking to you about, but did you know that
4 proof beyond a reasonable doubt was the highest burden known
5 in a court of law?

6 JOSEPH CHETSKO: No.

7 ATTY. INGRAM: It is. And wherever that
8 line is for you, it is necessarily way up near the top of the
9 cup. You got me?

10 JOSEPH CHETSKO: (Nods head
11 affirmatively.)

12 ATTY. INGRAM: And you know what
13 circumstantial evidence is, don't you?

14 JOSEPH CHETSKO: Oh, yeah.

15 ATTY. INGRAM: And if you were asked to
16 make an inference the first thing you're going to want to
17 consider, I would imagine, is whether the inference is
18 reasonable.

19 JOSEPH CHETSKO: Right.

20 ATTY. INGRAM: And would you agree with me
21 that circumstantial evidence is like a chain and only as
22 strong as its weakest link?

23 JOSEPH CHETSKO: Yes.

1 ATTY. INGRAM: And will you, will you look
2 for weak links whenever you're asked to make inferences?

3 JOSEPH CHETSKO: Yes.

4 ATTY. INGRAM: I briefly want to give you
5 an example of a situation where you sort of pile inferences
6 on inference and then I'm going to sit down. But if it's a
7 Saturday night in the middle of February about 11:00 o'clock
8 and I'm getting ready to go to bed and I'm in the upstairs of
9 my house and I look out and I see the grass and I go to bed
10 and I wake up in the morning and there's six inches of snow
11 on the ground, I didn't see it snow but I know it snowed,
12 right?

13 JOSEPH CHETSKO: I hope so.

14 ATTY. INGRAM: I also want my newspaper
15 and sometimes they don't deliver it, you're exceedingly
16 right, and it's late and I'm getting anxious. And I'm
17 standing up there, I got a cup of coffee in one hand, a
18 cigarette in the other hand, and I look and there's
19 footprints in the snow from the house to the right of me to
20 my front door, from my front door to the house to the left of
21 me. I can also assume that someone walked in the snow,
22 right?

23 JOSEPH CHETSKO: Yes.

1 ATTY. INGRAM: And I make a further
2 inference or a further assumption. I assume it's my
3 paperboy, and it seemed reasonable to me when I made it. I
4 went downstairs, opened the front door expecting to find my
5 paper and, lo and behold, there's some coupons for Giant
6 Eagle, Kmart and all over the place. You have to test these
7 inferences, especially when you come close to piling an
8 inference on an inference. You see what I mean?

9 JOSEPH CHETSKO: Yes.

10 ATTY. INGRAM: And will you do that?

11 JOSEPH CHETSKO: Yes.

12 ATTY. INGRAM: Now that we've taken so
13 much of your time and your attention, is there anything you
14 want to raise or discuss with any of us?

15 JOSEPH CHETSKO: No. I mean no, I have
16 nothing to say.

17 ATTY. INGRAM: Okay. Thank you, sir.

18 JOSEPH CHETSKO: You make your evaluation
19 or whatever, that's fine.

20 THE COURT: Just one minute, sir. Side
21 bar.

22 (Whereupon, a bench conference was held.)

23 THE COURT: Mr. Chetsko, you will be in

1 the pool from which we are going to select the alternates to
2 this case. That will happen Monday at 11:00 o'clock. We
3 have, we've already seated a jury and we're going to try to
4 have eight because both sides have two called peremptory
5 challenges which they can exercise without giving any reason.
6 I would like to have four alternates on this. We may have to
7 go with three, but every time we have a case of the length
8 that this will take there's always something that comes up
9 and you can't ever predict and we have to, many times the
10 alternates have to take over. This is the type of case, we
11 put five weeks in to this point, and if we run out of jurors
12 and we have to grant a mistrial and start the whole thing
13 over again and this is costing the county a lot of money. So
14 if you'd be back here at 11:00 o'clock Monday, it won't take
15 very long to go through that process.

16 I would again advise you not to read anything about
17 the matter, watch anything on TV, if there should be
18 anything, don't discuss anything about the case until you
19 return. Okay?

20 JOSEPH CHETSKO: You want me to come back
21 11:00 o'clock Monday?

22 THE COURT: 11:00 o'clock Monday.

23 JOSEPH CHETSKO: All right.

1 THE COURT: That's it. Thank you.

2 JOSEPH CHETSKO: Okay.

3 ATTY. BECKER: Thank you.

4 ATTY. BAILEY: Thank you.

5 ATTY. JUHASZ: Thank you, Mr. Chetsko.

6 ATTY. INGRAM: We'll see you. Have a good
7 weekend.

8 (Whereupon, Joseph Chetsko was added to
9 the pool of prospective alternate jurors and excused for the
10 day.)

11 ATTY. BAILEY: Take a five-minute break?

12 THE COURT: Huh?

13 ATTY. BAILEY: Take a break?

14 THE COURT: Yeah. Kelly is starting to
15 get weak here, so.

16 (Whereupon, a brief recess was taken.)

17 PROSPECTIVE JUROR BRAD PETAK

18 THE COURT: Good morning.

19 BRAD PETAK: Good morning.

20 THE COURT: You're Brad?

21 BRAD PETAK: Uh-huh.

22 THE COURT: Bradley, did you read that
23 outline?

1 BRAD PETAK: Yes, I did.

2 THE COURT: You want me to go right to the
3 last question?

4 ATTY. INGRAM: Yes, Your Honor.

5 ATTY. JUHASZ: Yes, please.

6 ATTY. INGRAM: Well, the last page at
7 least.

8 THE COURT: Brad, you've answered on the
9 questionnaire that you felt you could not sit in a case that
10 involved capital punishment, is that correct?

11 BRAD PETAK: Uh-huh, that's right.

12 THE COURT: Is that a strongly held belief
13 that you have or -- the reason I ask that, whatever your
14 belief is is fine. Everybody here will respect it. To sit
15 on this jury we need 12 people, all of whom are going to have
16 some view on the death penalty.

17 BRAD PETAK: Uh-huh.

18 THE COURT: Some more in favor, some less.
19 Now, if you're the type that you just couldn't even consider
20 it, then you should not serve on the jury. But the State has
21 the right to ask for the death penalty, the defendant has the
22 right to require that the jury consider the death penalty but
23 other factors also.

1 BRAD PETAK: Uh-huh.

2 THE COURT: Okay?

3 BRAD PETAK: (Nods head affirmatively.)

4 THE COURT: You tell me where you're
5 coming from.

6 BRAD PETAK: I don't know.

7 THE COURT: Is this something based on a
8 religious view or --

9 BRAD PETAK: Yeah.

10 THE COURT: It is?

11 BRAD PETAK: Uh-huh.

12 THE COURT: Do you feel that you could
13 under no circumstances even consider the death penalty?

14 BRAD PETAK: No.

15 THE COURT: You couldn't?

16 BRAD PETAK: Huh-uh.

17 THE COURT: Mr. Bailey or Mr. Becker, do
18 you wish to ask any questions?

19 ATTY. BAILEY: Just one or two. Well,
20 just a couple, and I will be short. Brad, my name is Ken
21 Bailey.

22 BRAD PETAK: Uh-huh.

23 ATTY. BAILEY: I'm an assistant

1 prosecutor. I'm just going to ask you a couple questions
2 about this.

3 BRAD PETAK: Okay.

4 ATTY. BAILEY: There are several reasons
5 that you don't want to serve here, is that right?

6 BRAD PETAK: My work and --

7 ATTY. BAILEY: Your work, you can't take
8 the time away from your work. You're a baker, right?

9 BRAD PETAK: Uh-huh.

10 ATTY. BAILEY: You get migraine headaches?

11 BRAD PETAK: Yeah.

12 ATTY. BAILEY: Your nerves are bothering
13 you?

14 BRAD PETAK: Yeah.

15 ATTY. BAILEY: And for this type of case
16 it's going to cause, you're afraid it could cause some
17 serious problems?

18 BRAD PETAK: Uh-huh.

19 ATTY. BAILEY: And with the death penalty,
20 you're Roman Catholic?

21 BRAD PETAK: Uh-huh.

22 ATTY. BAILEY: You go to church a couple
23 times a month?

1 BRAD PETAK: Yeah.

2 ATTY. BAILEY: And the church has taken
3 the position against the death penalty?

4 BRAD PETAK: Not really, no.

5 ATTY. BAILEY: Well, you believe in the
6 commandment thou shalt not kill, right?

7 BRAD PETAK: Uh-huh.

8 ATTY. BAILEY: And you think that's going
9 to effect your ability to come back with any -- you could
10 never come back with a judgment against the death penalty,
11 could you?

12 BRAD PETAK: No.

13 ATTY. BAILEY: You would never be able to
14 sign a death penalty verdict form even if we proved our case
15 beyond a reasonable doubt and even though under the facts and
16 the law it might be the appropriate or right verdict for the
17 case, you still could never take part in that, could you?

18 BRAD PETAK: No.

19 ATTY. BAILEY: Okay. Thank you very much.

20 ATTY. JUHASZ: We have no questions.

21 THE COURT: Okay. Any objection to me
22 dismissing for cause?

23 ATTY. INGRAM: Well, now that Mr. Bailey

1 has unnecessarily nailed down an unopposed challenge for
2 cause, no, there is none. I'm making fun of him, it has
3 nothing to do with you.

4 BRAD PETAK: Okay.

5 THE COURT: You're excused from any
6 further participation. We thank you for your time.

7 BRAD PETAK: Okay. Thank you.

8 THE COURT: Thank you now.

9 ATTY. BECKER: Thank you.

10 ATTY. BAILEY: Thanks.

11 ATTY. JUHASZ: Thank you.

12 ATTY. INGRAM: Have a good one.

13 BRAD PETAK: You, too.

14 (Whereupon, Brad Petak was dismissed from
15 the pool of prospective alternate jurors.)

16 PROSPECTIVE JUROR MARY JANE O'HARA

17 THE COURT: I have to ask you, does your
18 husband have any relatives from Sharon?

19 MARY JANE O'HARA: No, he doesn't.

20 THE COURT: Oh. I grew up with a family
21 over there, two boys, were good friends of mine.

22 You read that outline that was given to you?

23 MARY JANE O'HARA: Yes.

1 THE COURT: Okay. You understand that
2 this is an aggravated murder case with specifications. Under
3 the law of Ohio just because a person commits murder does not
4 necessarily mean that they face the death penalty. The
5 legislature drafted the law so that if a person is convicted
6 of aggravated murder and the prosecution has attached a
7 specification, which -- specifications, which is from things
8 in the statute that says if you commit aggravated murder and
9 these additional circumstances apply and the State proves
10 that beyond a reasonable doubt, then the issue of capital
11 punishment becomes part of the case.

12 We won't have any idea what this jury is going to do
13 until they've heard all the evidence. At the initial stage
14 the State is called upon to prove all the elements that are
15 necessary to ask the jury for a guilty verdict beyond a
16 reasonable doubt. Now, if they fail to do that then this
17 jury would properly return a verdict of not guilty. That's
18 the end of the trial. If the State is able to carry their
19 burden of proof then this matter would go into a second
20 phase, and since we have no idea whether we will be into that
21 second phase or not we have to assume that it is a
22 possibility.

23 MARY JANE O'HARA: Yes.

1 THE COURT: Therefore, we have to -- these
2 folks have to have some idea of what the beliefs and thoughts
3 of each of these jurors is in regard to the issue of capital
4 punishment. The reason for that is if you had a juror that
5 firmly believed in an eye for an eye, then the defendant
6 could not possibly get a fair trial because the law says that
7 in that second phase the burden is again and always on the
8 prosecution to prove the aggravating circumstances about the
9 murder -- those are reasons why the death penalty should be
10 considered and imposed -- outweigh any mitigating factors.
11 And the mitigating factors are reasons put to the jury's
12 consideration as to why in this particular case the death
13 penalty should not be imposed.

14 Well, likewise, if you had somebody on the jury that
15 under no circumstances could ever see themselves
16 participating in deciding whether a person lives or dies,
17 then that person could not be fair as far as the State was
18 concerned because the State under the law has the right to
19 ask for the death penalty if they prove everything necessary
20 to get to that point. So it is felt necessary up front to
21 have some idea about the thoughts of each potential juror.
22 And whatever your thoughts are are fine, you're entitled to
23 those. It's just that these folks have a right to determine

1 whether or not they will be comfortable with any particular
2 person sitting on this jury. As I said, they are all going
3 to have their own view of capital punishment, some for, some
4 against more than another, but the question is are they able
5 to follow the law? That's the bottom line.

6 Another issue is the question of pretrial publicity.
7 Some of the people we've interviewed knew something about the
8 case. Some knew more, some knew quite a bit. But the case
9 to be tried fairly has to have a decision made on the
10 evidence which will be presented in this courtroom. Anything
11 that happened before this trial starts is not evidence and it
12 would be unfair to have a situation where 12 jurors get back
13 into the jury room and they agree that the evidence showed
14 that this, that or another thing happened and then somebody
15 says, "Well, wait a minute. I read about that in the paper
16 and I don't agree with that." You can't have that. It has
17 to be legitimate evidence produced here. So those are the
18 questions that will be put to you primarily, okay?

19 MARY JANE O'HARA: That's fine.

20 THE COURT: Another thing, you will be an
21 alternate if chosen. We've already seated a jury. Over the
22 years I've had a few people that felt that was a waste of
23 their time, but it's a very important thing that we have

1 alternates, particularly when you have a trial that takes
2 more than a couple days, because you have 12 people. Many
3 things can happen in their lives and someone may be called
4 away, so we have to have that pool to be able to put somebody
5 in there that's already listened to everything as if they
6 were on the jury. Do you have any problem with serving in
7 that capacity?

8 MARY JANE O'HARA: No, I don't.

9 THE COURT: Okay. I thank you for that.
10 Gentlemen.

11 ATTY. BECKER: Can we approach, Your
12 Honor?

13 THE COURT: Yeah.

14 (Whereupon, a bench conference was held.)

15 THE COURT: We're going to break for
16 lunch. I'm sorry to inconvenience you any further but
17 there's a couple things here that these folks have to do over
18 the lunch period, so. I didn't realize that it was that
19 late. But you are all primed now to start answering
20 questions, so if you would be back here at 1:00 o'clock.

21 MARY JANE O'HARA: Okay.

22 THE COURT: Okay. Thank you very much.

23 ATTY. BECKER: Thank you.

1 ATTY. BAILEY: Thank you.

2 (Whereupon, a luncheon recess was taken.)

3 THE COURT: Okay. These gentlemen are
4 going to ask you some questions now along the line that I've
5 mentioned.

6 MARY JANE O'HARA: Okay.

7 ATTY. BAILEY: Good afternoon,
8 Mrs. O'hara.

9 MARY JANE O'HARA: Hello.

10 ATTY. BAILEY: Hi. My name is Ken Bailey.
11 I'm an assistant prosecutor and I think you saw me, I think
12 it's been close to a month ago, in the other courtroom. And
13 I promised at that time that I would be joined by my
14 co-counsel, Chris Becker, and the two of us as assistant
15 prosecutors are responsible for prosecuting this case on
16 behalf of the people of Trumbull County and the State of
17 Ohio. And because of that, because we want to make sure that
18 the folks who are selected to serve on this particular jury
19 can be fair and impartial to both sides, both to the
20 defendant and to the people of the State, we're going to ask
21 some questions regarding your prior experiences and your
22 opinions. And that's why we're asking it, not because we're
23 snoopy and we like to pry into people's backgrounds, but just

1 to make sure they can be fair and impartial to both sides.

2 Now, there aren't any right or wrong answers to
3 these questions, there's just open and candid answers. And
4 this is the one chance that we get to talk together during
5 these proceedings until this case, and it may be in two
6 separate phases, until the entire case is over. If you have
7 any questions that come up about our procedure or what we're
8 doing here and if we can get an answer for you, feel free to
9 ask. If there's anything you're not clear about, stop me and
10 have me clarify it.

11 MARY JANE O'HARA: Certainly.

12 ATTY. BAILEY: Okay. The only reason I
13 mention that is because when we're done here today until this
14 case is all over we're not allowed to have any communication
15 with you under our rules of conduct, so if we run into each
16 other in the hallway, in the elevator, at a restaurant, we're
17 not allowed to say anything more than good morning or good
18 afternoon. It would be improper and it could result in a
19 mistrial. And it's not that we're trying to be antisocial
20 and snub you, it's just because we're not allowed to talk to
21 you.

22 MARY JANE O'HARA: I understand.

23 ATTY. BAILEY: If there are questions you

1 have to direct them to the bailiff. Laurie Brown, she's not
2 here now, but she will be when the trial begins, I believe,
3 and so if anything like that comes up, you know, address the
4 questions to her or to the Court.

5 Now, we're going to ask you some questions this
6 afternoon. I'm going to ask you about pretrial publicity and
7 the death penalty as a punishment and then I'm going to ask
8 you some regular questions.

9 MARY JANE O'HARA: Certainly.

10 ATTY. BAILEY: Okay. So let's start out
11 with this pretrial publicity. I notice that you get the
12 Vindicator every day and you watch the 21 News at night and
13 you had some recollections from the TV and the newspapers
14 about some of the facts or the issues in the case. Now, what
15 do you recollect? Well, had you ever discussed this with
16 anybody, any family or friends or --

17 MARY JANE O'HARA: No. I was doing quite
18 a bit of traveling. I'm not sure of the dates, but -- and at
19 first, because I didn't have a lot of information about when
20 they were selecting jury, exactly what the case was, and I
21 hadn't remembered the name, I think I wrote that I thought
22 maybe it had to do with a --

23 ATTY. BAILEY: I think you wrote down

1 somebody was killed in a home robbery.

2 MARY JANE O'HARA: Right.

3 ATTY. BAILEY: And something about prison
4 accomplice and letters.

5 MARY JANE O'HARA: And something about
6 letters, right, and that was it.

7 ATTY. BAILEY: And you filled it out about
8 a month ago.

9 MARY JANE O'HARA: You're exactly right.

10 ATTY. BAILEY: Now, since then --

11 MARY JANE O'HARA: Okay. I only had, I
12 only had --

13 ATTY. BAILEY: -- have you had a chance to
14 think about it and has anything jogged any further
15 recollection in your mind?

16 MARY JANE O'HARA: Not really. When I
17 tell people that I'm going on the jury I immediately say, you
18 know, I can't talk about it. And I had a party last night
19 and I said I have to go to court in the morning and I said I
20 can't talk about it, I'll leave, talk among yourselves type
21 thing. But I only had one problem and that was my aunt is 88
22 and I mentioned and she says, "Oh, I bet I know what case it
23 is," and I go, "Stop, stop. I can't talk." And she

1 mentioned a man who had already had his trial and I again
2 told her stop, but that's it, because I've been so careful
3 not to.

4 ATTY. BAILEY: Okay. And there's a reason
5 for that. The judge admonishes the jurors that they're not
6 to talk to anybody else about the case or if anything comes
7 on TV or radio to either walk out or shut it off or put your
8 hands over your ears.

9 MARY JANE O'HARA: Sure, and I've tried to
10 do that.

11 ATTY. BAILEY: Or if there's an article in
12 the paper, you see a headline or something, just put it aside
13 until later, until the trial is all over. And as you look
14 around the courtroom there is nobody here right now from the
15 news media. There was a reporter earlier from the Tribune
16 who stopped in, Chris Bobby, and I'm sure Peggy Sinkovich
17 will be here from the Vindicator and probably the TV channels
18 will send their on-air people to come in and do a feature on
19 the trial as the trial begins, but you'll notice one thing,
20 they're not going to be here for the whole trial, they're
21 going to be here for just a couple of minutes.

22 And Chris Bobby may stay for a good part of the
23 trial, but then he's going to get up and leave because there

1 are other stories going on, other trials and other things
2 going on in the county, so they're going to be missing
3 everything that was asked and answered before they got in and
4 everything that was asked and answered after they leave. And
5 because they have to rush into print and do their stories and
6 features, their stories may be taken out of context.

7 As a matter of fact, if you sit here for this whole
8 trial as an alternate then you would perhaps say somebody
9 save the papers for you and you read them later, you might
10 say gosh, I sat in Judge Stuard's court for that whole trial
11 and whoever wrote this story must have been sitting in Judge
12 Logan's court covering a different trial because the whole
13 gist of the testimony that day was just the opposite.

14 MARY JANE O'HARA: I understand.

15 ATTY. BAILEY: That's not unusual, okay,
16 not intentionally but because of the nature of the beast.

17 MARY JANE O'HARA: Out of context, sure.

18 ATTY. BAILEY: Okay. So what we ask you
19 to do is to perform mental gymnastics sort of, to start off
20 fresh. It's like going into a class at school and starting
21 out with a clean slate and whatever is going to be written on
22 that slate has to be written here in this courtroom through
23 the testimony of the witnesses and the evidence that's

1 received and the instructions of law given to you by the
2 judge, okay? And anything else that you might recollect
3 about the case or what maybe somebody had told you something
4 before, you have to mentally set that aside and make your
5 determination here solely on what happens in this courtroom
6 within these four walls. You are able to do that?

7 MARY JANE O'HARA: Yes.

8 ATTY. BAILEY: Okay. You wouldn't have
9 any problem doing that?

10 MARY JANE O'HARA: No.

11 ATTY. BAILEY: Okay. Now, so much for
12 pretrial publicity. Let's talk about this issue where the
13 death penalty is a possible punishment. Now, the first time
14 you learned that this was potentially a death penalty case
15 was when?

16 MARY JANE O'HARA: I believe when we went
17 into the courtroom when all the jurors, the prospective
18 jurors were all brought in together.

19 ATTY. BAILEY: Back on April 8th, about a
20 month and a day ago?

21 MARY JANE O'HARA: Yes.

22 ATTY. BAILEY: Okay. And before that you
23 had indicated that you are, if I understand your

1 questionnaire, you believe in the death penalty as a possible
2 punishment?

3 MARY JANE O'HARA: Yes.

4 ATTY. BAILEY: Okay. Under our system
5 here in Ohio the state legislature writes the laws, they
6 write down what the crimes are and what the penalty ranges
7 are, okay, and they've included the death penalty as a
8 possible punishment in our system for certain crimes. Now,
9 if you had some -- say if you were on the legislature and you
10 could write the laws in the State of Ohio, would you include
11 the death penalty as a punishment?

12 MARY JANE O'HARA: I don't think I would
13 because I would want truth in sentencing. I would want --
14 when I hear somebody is sentenced to 10 years in prison and
15 they're given one year --

16 ATTY. BAILEY: Okay. You're talking about
17 good time credit. Okay.

18 MARY JANE O'HARA: Yes.

19 ATTY. BAILEY: Okay. Now, you understand
20 they changed the law back in 1996?

21 MARY JANE O'HARA: Maybe I didn't know
22 that.

23 ATTY. BAILEY: They did, they changed it.

1 It used to be you would get about a third of your sentence
2 off for good time credit.

3 MARY JANE O'HARA: Exactly.

4 ATTY. BECKER: Well, they did away with
5 that and now you can build up, I think it's one day a month
6 good time. They use different words. When they passed that
7 law they basically did away with good time credits, so now
8 you do have your basic truth in sentencing.

9 MARY JANE O'HARA: I think at one point I
10 believed that if somebody was sentenced to the death penalty
11 and it was a very, very serious crime that this would assure
12 that they stayed in prison because I always felt that if they
13 were given life they would get 20 years is my general
14 beliefs, but if you said this has been changed.

15 ATTY. BAILEY: Well, the death penalty,
16 the legislature did include the death penalty as a possible
17 punishment.

18 MARY JANE O'HARA: Okay.

19 ATTY. BAILEY: And you understand it's a
20 real penalty because we've had a number of people who have
21 been executed in Ohio over the last couple of years. I mean,
22 for a long time nobody was executed.

23 MARY JANE O'HARA: Right.

1 ATTY. BAILEY: But -- from 1963 until a
2 few years ago. But there were a couple of cases over the
3 last few years where people have been executed in Ohio.

4 MARY JANE O'HARA: I would take it so very
5 seriously. Yes, I would consider it, but I would take it
6 very, very seriously.

7 ATTY. BAILEY: What I'm asking is if you
8 wrote the laws --

9 MARY JANE O'HARA: Yes.

10 ATTY. BAILEY: -- would you include the
11 death penalty for certain crimes as a possible punishment?

12 MARY JANE O'HARA: Yes, very -- I mean,
13 it, it would have to be very, very serious, yes. Yes.

14 ATTY. BAILEY: Right. And that's the way
15 the legislature looks at it. They only include it for what
16 they consider to be serious, very serious offenses. You
17 understand that not all killings are treated equally in the
18 law?

19 MARY JANE O'HARA: I understand. I was
20 reading today the paper we were given and --

21 ATTY. BAILEY: Okay. Let me give you an
22 example. If somebody is out chopping wood with an ax and the
23 head of the ax flies off the handle and killed somebody, that

1 would be an accident, right?

2 MARY JANE O'HARA: Yes.

3 ATTY. BAILEY: You wouldn't expect anybody
4 to get punished for that.

5 MARY JANE O'HARA: Correct.

6 ATTY. BAILEY: If somebody is driving a
7 car down the road and going too fast for the conditions and
8 goes through a stop sign and kills a pedestrian, you would
9 expect they'd face some type of punishment, maybe jail or
10 prison time, right?

11 MARY JANE O'HARA: Correct.

12 ATTY. BAILEY: But not the death penalty,
13 right?

14 MARY JANE O'HARA: Correct.

15 ATTY. BAILEY: If somebody commits a
16 killing, two guys are in a bar, they're drinking, the one
17 fellow punches the other and the other guy hits him back, and
18 during this one of the fighters hits the other person and the
19 victim goes backwards, hits his head on the edge of the bar
20 and dies as a result of internal bleeding, that would be
21 perhaps punishable with maybe a prison sentence of some kind,
22 maybe a manslaughter or something, but not the death penalty,
23 right?

1 MARY JANE O'HARA: Correct.

2 ATTY. BAILEY: Okay. Let's say under the
3 law in Ohio as it's written by our legislature -- let's say I
4 decide I'm upset with my co-counsel, I don't like his shoes,
5 okay, and I say quit wearing those shoes and he won't. And
6 so I get out on the courthouse steps and I tell the whole
7 world I'm upset with Chris's shoes, "If he's wearing those
8 shoes tomorrow when he comes in here at 9:00 o'clock in the
9 morning I'm going to take a .357 and blow him away," and sure
10 enough, he comes up the steps wearing those shoes tomorrow
11 and I blow him away with a .357. Okay. That's aggravated
12 murder, okay, killing -- the purposeful killing of another
13 with prior calculation and design, but under Ohio law that's
14 not punishable by the death penalty. It's punishable by a
15 prison sentence, some type of life sentence, but it's not a
16 death penalty offense under Ohio law because under Ohio law
17 the legislature says there has to be more. There has to be a
18 specification of aggravating circumstances, which is a bunch
19 of fancy words for an extra finding of fact made by a jury,
20 okay, and these would be things like the extra facts that
21 would have to attach to the crime of aggravated murder. It
22 would be like the killing of a police officer. It could be a
23 serial killer, mass murder. It could be killing during a

1 special felony like kidnapping or rape or an aggravated
2 robbery or aggravated burglary. It could be a murder for
3 hire. And then there are other things that the -- or the
4 killing of a governor or lieutenant governor or the
5 president. Okay. There are certain things that the
6 legislature has written into the law that would make a person
7 eligible for the death penalty. Okay. I mean, would you
8 include any of those types of things in your personal system
9 if you could design the system?

10 MARY JANE O'HARA: I indicated on my
11 questionnaire a serial killer or very, very, very serious
12 crimes. And also in reading --

13 ATTY. BAILEY: Well, when you say very
14 serious crimes are you talking about maybe a premeditated
15 murder for profit or something?

16 MARY JANE O'HARA: Right. But I think
17 you've clarified a lot of things in the paper that we read
18 about aggravated circumstances and -- what's the other one?

19 ATTY. BAILEY: Mitigating factors?

20 MARY JANE O'HARA: Yes, mitigating
21 factors.

22 ATTY. BAILEY: Okay. We're going to talk
23 about mitigating factors.

1 MARY JANE O'HARA: Okay. Sorry I jumped
2 ahead.

3 ATTY. BAILEY: Okay. You found that paper
4 helpful?

5 MARY JANE O'HARA: Very much so. It was
6 very informative. And that's the law and that's what we're
7 supposed to follow.

8 ATTY. BAILEY: Right. Okay. And you
9 wouldn't have any problem setting aside your personal belief
10 system and following the law as the judge would instruct you,
11 right?

12 MARY JANE O'HARA: Absolutely. That's
13 what we're to do.

14 ATTY. BAILEY: Now, your view on the death
15 penalty, has your view gotten stronger over the years or has
16 it stayed the same? Has it changed over the years?

17 MARY JANE O'HARA: I don't think it's
18 changed at all except for what I indicated to you, that if I
19 was concerned that the law was that somebody that did a very,
20 very serious crime and I'd say, well, you know, that they'd
21 be out in 20 years, which I guess --

22 ATTY. BAILEY: Okay. Now, your belief in
23 the death penalty as being appropriate for some types of

1 crimes, for very serious crimes, what's it based on? Is it
2 based on a personal, religious, moral, ethical belief, or
3 some combination?

4 MARY JANE O'HARA: I would say moral and,
5 of course, you know, probably just acquired knowledge and
6 feelings over the years. You know, I'm getting up there and
7 you keep adding knowledge and experience, but nothing, no
8 personal experience but, you know, just from things you read
9 and maybe other people's stories.

10 ATTY. BAILEY: Okay. Now, under our,
11 under our system this type of case can be tried in two
12 different phases. Okay. The first phase is tried just as
13 any other trial in Ohio, any other criminal trial where the
14 jury makes a determination as to guilt or non-guilt. The
15 State has the burden of proving beyond a reasonable doubt the
16 elements of the crimes charged. Elements are like the
17 essential ingredients like the ingredients in a cake, maybe
18 chocolate cake -- we'll pick chocolate because it's my
19 favorite -- and we got to put all those ingredients in. And
20 if we -- the eggs, the flour, the water, the baking powder,
21 the sugar, all that stuff, including the chocolate. Okay.
22 And if we leave one out we don't have that cake. If we leave
23 the chocolate out we might have a cake, but it's not going to

1 be a chocolate cake, right?

2 MARY JANE O'HARA: (Nods head
3 affirmatively.)

4 ATTY. BAILEY: We have to bake a bunch of
5 different cakes here for these crimes.

6 MARY JANE O'HARA: Okay.

7 ATTY. BAILEY: Okay. For the crimes and
8 the specifications. And you got to consider each one
9 separately because you might decide hey, they proved all
10 these cakes, they baked all these cakes beyond a reasonable
11 doubt, but I got a question on one of them. Okay. So you
12 try -- each one will be considered separately.

13 Now, in the first phase the issue is guilt or
14 non-guilt, has the State established the elements of the
15 crime charged beyond a reasonable doubt? And punishment is
16 not an issue in the first phase so you wouldn't expect to
17 hear any testimony as to what the appropriate punishment
18 would be in the first phase, right?

19 MARY JANE O'HARA: Correct.

20 ATTY. BAILEY: Okay. So let's say that
21 you and the other jurors find the defendant guilty beyond a
22 reasonable doubt of the crime called aggravated murder and
23 one or more of these specifications, these special findings

1 of fact, of aggravating circumstances. We would then move
2 into a second phase and in a second phase the issue is
3 different. It's not guilt anymore because you've already
4 determined guilt beyond a reasonable doubt. Okay. The issue
5 in the second phase is what's the appropriate punishment for
6 this defendant for this offense, okay? And when you go into
7 a second phase you have to be able to consider equally four
8 different possible punishments. There's the punishment of
9 the death penalty, there's life in prison without any parole
10 eligibility, there's life in prison with parole eligibility
11 after 30 full years, and life in prison with parole
12 eligibility after 25 full years. To sit on this jury you
13 have to start out considering those things equally in your
14 mind. Would you be able to do that?

15 MARY JANE O'HARA: Yes.

16 ATTY. BAILEY: Okay. Now, in the second
17 phase you're asked to do an imaginary balancing test. It's
18 like having a scale and on one side of the scale there are
19 going to be the aggravating circumstances that you would have
20 found, the specification of aggravating circumstances from
21 the first phase, and basically there are two of those that
22 could be found. And the specifications basically are that,
23 the first one is the aggravated murder was committed with

1 prior calculation and design during the course of an
2 aggravated burglary, and the second specification is that the
3 aggravated murder was committed with prior calculation and
4 design and during the course of an aggravated robbery as
5 opposed to the aggravated burglary, so that can be on one
6 side of the scale, like these bad facts, these findings.
7 Okay.

8 On the other side of the scale could be what we call
9 the mitigating factors, and mitigating factors, fancy words
10 for just good facts that could be in favor of the defendant
11 and that would work against the imposition of the death
12 penalty as a punishment. Okay?

13 MARY JANE O'HARA: Sure.

14 ATTY. BAILEY: And the place where you may
15 hear about these could be in a second phase. In a second
16 phase you may hear the same testimony over again. Okay.
17 Generally the State says something like we move to admit all
18 the relevant facts in evidence from the first phase relating
19 to these aggravating circumstances into the second phase.
20 And then in the second phase you might hear evidence
21 pertaining to these mitigating factors, and we don't know
22 what they are because they're not relevant, but it could be
23 like that example about the two guys who were drinking in the

1 bar and got in the fight. You might consider that maybe a
2 mitigating factor or something.

3 MARY JANE O'HARA: Sure.

4 ATTY. BAILEY: Okay. And then on this
5 weighing, it's up to you. You have to be able to consider
6 these things. To sit on this jury you got to be able to
7 consider the aggravating circumstances and you got to be able
8 to consider whatever mitigating factors are presented.

9 Now, it's totally up to you and the other 11 jurors
10 as to how much weight you want to assign to these different
11 things. You might decide that something weighs a whole lot,
12 like maybe 20 pounds or a ton, and you might decide that
13 something else may weigh about as much as a feather, right?
14 It's got to have some weight but it's totally up to you how
15 much weight to give.

16 If the State proves beyond a reasonable doubt so
17 that you're firmly convinced to a moral certainty using your
18 reason and common sense that the aggravating circumstance or
19 circumstances outweigh the mitigating factors beyond a
20 reasonable doubt, then you would have to come in with the
21 death penalty as a verdict because that would be the
22 appropriate punishment under the law if the State meets its
23 burden of proof.

1 If we don't convince you beyond a reasonable doubt
2 that the aggravating circumstance or circumstances outweigh
3 the mitigating factors, then you forget about the death
4 penalty and you go to the three life sentences and then you
5 make a determination based upon all the facts and evidence
6 and the instructions of law as to what the most appropriate
7 penalty is on the life sentence. Okay?

8 MARY JANE O'HARA: Uh-huh.

9 ATTY. BAILEY: And you wouldn't have any
10 idea until you heard the evidence in the second phase, right?

11 MARY JANE O'HARA: Absolutely.

12 ATTY. BAILEY: Because that would be when
13 it could be presented. Okay.

14 Now, if we convince you that the death penalty --
15 well, let's say in the first phase we convince you beyond a
16 reasonable doubt that the defendant is guilty of aggravated
17 murder and one or more of these specifications. Would you be
18 able to sign a verdict form for guilty knowing that if you
19 did so the defendant would then be eligible for the death
20 penalty as a possible punishment in the second phase?

21 MARY JANE O'HARA: Yes.

22 ATTY. BAILEY: Okay. And let's say we go
23 to a second phase and we convince you and the other 11 jurors

1 beyond a reasonable doubt that the death penalty is the
2 appropriate punishment, okay? Would you be able to sign a
3 verdict form for the death penalty as a punishment?

4 MARY JANE O'HARA: Yes.

5 ATTY. BAILEY: Okay. And would you be
6 able to announce in open court if the judge asked you is this
7 your verdict, would you be able to say yes, it is my verdict?

8 MARY JANE O'HARA: Yes.

9 ATTY. BAILEY: Okay. Now, you understand
10 that if you and the other jurors find the defendant guilty
11 beyond a reasonable doubt of aggravated murder and one or
12 more of these specifications the death penalty is not an
13 automatic punishment, right?

14 MARY JANE O'HARA: I understand.

15 ATTY. BAILEY: And the reason for that is
16 you wouldn't have heard anything in the first phase about
17 mitigating factors, right?

18 MARY JANE O'HARA: The second phase,
19 correct.

20 ATTY. BAILEY: Okay. Let me -- so much
21 for the death penalty as a possible punishment. Let's get to
22 some regular questions. Okay. The defendant here is charged
23 with a number of crimes but the defendant is not charged as a

1 trigger person. She's charged, rather, as a complicitor.
2 Okay. A complicitor is someone who purposely solicits or
3 procures another person to commit a crime, or aids and abets
4 another person, helps, encourages, strengthens or plans with
5 another person in the commission of an offense. Okay. And
6 the charge here is that the defendant planned with a guy by
7 the name of Nate Jackson to kill the defendant's ex-husband
8 with whom she was living for insurance money and that the
9 aggravated burglary, the trespass into the victim's home, was
10 actually done by this Nate Jackson and that a car was stolen
11 by this Nate Jackson that was used by the victim and that
12 this Nate Jackson used a working gun, a firearm, in the
13 commission of these offenses. Okay. But you understand the
14 defendant is not charged as the trigger person?

15 MARY JANE O'HARA: I understand.

16 ATTY. BAILEY: Under Ohio law the State is
17 allowed to charge a defendant this way and the defendant
18 under Ohio law could be eligible for the death penalty as a
19 possible punishment even though she's not the trigger person
20 if we prove all the elements of the crime and the
21 specifications beyond a reasonable doubt. Do you have any
22 problem with that?

23 MARY JANE O'HARA: I would take it very

1 serious but I would have to hear all of the information and I
2 would go by Judge Stuard's instructions.

3 ATTY. BAILEY: Okay. So the fact that
4 she's charged as a complicitor, you would be able to consider
5 -- you would hold us to our burden of proof and if we met our
6 burden of proof --

7 MARY JANE O'HARA: Correct.

8 ATTY. BAILEY: -- under the law, proof
9 beyond a reasonable doubt, you would be able to return a
10 conviction even though she's not the trigger person?

11 MARY JANE O'HARA: If this was our
12 instructions, yes.

13 ATTY. BAILEY: Okay. The fact that she's
14 a woman and not a man, does that bother you in any way in
15 returning an appropriate verdict under the law and on the
16 facts in this case?

17 MARY JANE O'HARA: Not -- if the facts are
18 as presented, I would -- no, there wouldn't be any change in
19 how I would perceive it.

20 ATTY. BAILEY: Okay. Now, as a
21 complicitor the defendant is charged with two counts of
22 aggravated murder. Now, there's only one person that's been
23 killed, but under Ohio law the State has the right to pursue

1 two separate theories of the killing and have the jury
2 consider both theories of the killing and there's nothing
3 wrong with our doing that. We're allowed to do that under
4 the law, we've elected to do so, and that's what we've done.
5 And attached to these charges of aggravated murder are these
6 two specifications that I mentioned. Okay. There's also two
7 other charges, a charge of aggravated burglary and aggravated
8 robbery, and attached to those charges are specifications, or
9 special findings, of a firearm, that a working gun was used
10 in the commission of these offenses. Okay.

11 Now, each crime is composed of certain elements. I
12 mentioned elements were like the ingredients of a cake,
13 right?

14 MARY JANE O'HARA: Correct.

15 ATTY. BAILEY: And the judge is going to
16 give the instructions of law in detail at the end of this
17 case about the law and the elements and definitions and
18 you're bound to follow those instructions, but I'm going to
19 give you a for instance. Let's -- these two counts of
20 aggravated murder, okay, the first aggravated murder is
21 charged with prior calculation and design and the second
22 aggravated murder is charged as the purposeful killing of
23 another in the course of a special felony like the aggravated

1 burglary and/or aggravated robbery. Okay.

2 Examples of the elements. Okay. Let's take the
3 crime of aggravated murder with prior calculation and design.
4 The State would have to prove beyond a reasonable doubt that
5 it happened first on or about a certain day like December
6 11th, 2001. Second we would have to prove that it happened
7 here in Trumbull County, Ohio. We call that venue, okay, and
8 that term just means that we have to prove it, and you'll
9 hear that question asked, in what county and state did this
10 occur, so that we can try the case in this courthouse and not
11 up in Ashtabula or down in Columbiana.

12 MARY JANE O'HARA: Okay.

13 ATTY. BAILEY: The third element might be
14 identification. Somebody is going to have to come in and
15 point out the defendant, okay, as the person who did this.
16 Fourth is that she acted purposely, basically on purpose, but
17 the judge will give you a detailed legal definition.
18 Everything has got a detailed legal definition. Okay. And
19 you're probably familiar as a reference, prior reference
20 librarian with definitions --

21 MARY JANE O'HARA: Definitely.

22 ATTY. BAILEY: -- and all kind of things
23 like that with books. Fifth, that she caused the death of a

1 living person, in this case a fellow by the name of Robert
2 Fingerhut. And six, that she acted with prior calculation
3 and design. Okay. Let me give you -- and prior calculation
4 and design requires some advanced planning and a studied
5 scheme to kill.

6 Let me give you a for instance. For instance, let's
7 say I drop my pen and I catch it. That could be a reflex,
8 right? No planning needed. But let's say I drop my pen and
9 I look down and say, "Oh, my goodness, I dropped my pen.
10 Maybe I better bend down and pick it up," and I do that.
11 That's some advanced planning, right? Okay.

12 Well, let's say yesterday I told my co-counsel, I
13 said, "Chris, I need an example of prior calculation and
14 design. I'm going to go into court tomorrow and drop my pen
15 so I can bend over and pick it up and demonstrate prior
16 calculation and design," and that would be prior calculation
17 and design. There's the advanced planning and the studied
18 scheme to do this, right?

19 MARY JANE O'HARA: Yes, sir.

20 ATTY. BAILEY: Now, I already mentioned
21 those two specifications attached of these aggravating
22 circumstances, that the aggravated murder was committed
23 during an aggravated burglary with prior calculation and

1 design, and the other is that it was committed during an
2 aggravated robbery with prior calculation and design, and
3 then we've got those terms or crimes, aggravated burglary and
4 aggravated robbery. And sometimes folks who aren't versed in
5 the law will interchange those terms and people may say gosh,
6 my home got robbed, and they really mean my home got burgled.

7 MARY JANE O'HARA: Right.

8 ATTY. BAILEY: Basically when we talk
9 about aggravated burglary we're talking about somebody
10 trespassing in an occupied structure of another person, a
11 dwelling house, somebody's home.

12 MARY JANE O'HARA: Okay.

13 ATTY. BAILEY: And the victim is present
14 and the perpetrator goes in to commit an offense, like an
15 aggravated murder or a theft offense or something, and he's
16 armed with a deadly weapon, like a gun or a knife, and he
17 causes serious physical harm or death to the victim. The
18 aggravated robbery, on the other hand, doesn't involve a
19 structure. The aggravated robbery is where the perpetrator
20 uses force or threat of force against another person --

21 MARY JANE O'HARA: I see.

22 ATTY. BAILEY: -- to commit maybe a theft
23 offense. And, again, he could be armed with a gun or a

1 knife, a deadly weapon, and cause serious physical harm or
2 death to the victim. Okay.

3 MARY JANE O'HARA: I didn't understand
4 those. I'm glad you clarified it. I was going to ask but I
5 figured you'd come around with it.

6 ATTY. BAILEY: Okay. And that's why I
7 ask. I figure folks usually, unless they're lawyers, they're
8 not used to having those terms used in specific ways like
9 that.

10 MARY JANE O'HARA: Sure.

11 ATTY. BAILEY: And this specification of a
12 firearm, that just means it's a working gun.

13 MARY JANE O'HARA: I see.

14 ATTY. BAILEY: Pull the trigger and a
15 projectile comes out through the use of combustion or
16 explosion, and the judge will give you a detailed definition
17 as to that. It will have more elements in it, okay, and we
18 got to prove those things beyond a reasonable doubt.

19 Now, let's talk about this burden of proof, okay?
20 The State has the burden of proving the elements of the crime
21 charged beyond a reasonable doubt, and if we don't live up to
22 this burden and if we miss one of those elements, like let's
23 say I never asked the question about what county and state

1 did this occur, I never prove venue, you got to find the
2 defendant not guilty. You may feel well, gosh, they proved
3 everything else, I really ought to find her guilty, but you
4 can't, right? You understand that?

5 MARY JANE O'HARA: Yes.

6 ATTY. BAILEY: The burden is totally on
7 us. That burden never shifts. The defendant has no burden,
8 okay? The defendant and her attorneys, they can just sit
9 there during the course of the trial and work crosswords or
10 jumbles or something, but they're not going to do that. They
11 are excellent attorneys and they're not going to do that, but
12 they don't have any burden, okay, no burden of proof. The
13 burden is totally on us, the people of the State. It's the
14 State that charged the defendant through a charging document
15 called an indictment. The State went to the grand jury, it
16 presented witnesses, and the only ones there were the
17 prosecutor, a recording secretary, a witness and the grand
18 jurors. Okay. The defendant doesn't have any right to be in
19 the grand jury and her attorneys aren't there, okay? All
20 that happens in a grand jury is they come out with a charging
21 document. Basically it sets out the parameters of what we're
22 here for, tells her what she's charged with and tells us what
23 we got to prove.

1 MARY JANE O'HARA: I see.

2 ATTY. BAILEY: And now it's time for the
3 State basically to put up or shut up, okay? We made the
4 charges and now we got to prove it.

5 Now, under our, under our American system of justice
6 we have a presumption called the presumption of innocence,
7 okay, and this defendant is presumed to be innocent, as are
8 all other defendants tried in this courtroom. And that
9 presumption of innocence acts like a cloak shielding this
10 defendant all through the course of this trial. And that
11 stays with her, that presumption of innocence, unless and
12 until the State is able to put on enough evidence so that
13 when you and the other jurors go back in the jury room to
14 deliberate based on the testimony and the evidence and the
15 judge's instructions, you find that we proved the elements of
16 the crime charged beyond a reasonable doubt. And if we do,
17 then you can return a guilty verdict and that presumption of
18 innocence at that point would be gone, right?

19 MARY JANE O'HARA: Yes.

20 ATTY. BAILEY: Okay. Now, other countries
21 may not have the presumption of innocence. If you're in
22 France or if you're in Turkey there may be a presumption of
23 guilt, but that's not our system. The defendant in that type

1 of case would have to prove his or her own innocence, but
2 that's not our system because we have the burden of proof,
3 and because of the presumption of innocence the defendant
4 doesn't have to do anything. It's not right under our system
5 for the defendant to have to do anything. It's totally on
6 us. The State has to win or lose the case all on its own,
7 okay?

8 MARY JANE O'HARA: I understand.

9 ATTY. BAILEY: You'd be able -- you agree
10 with that presumption of innocence?

11 MARY JANE O'HARA: Yes, I do.

12 ATTY. BAILEY: And with the burden of
13 proof?

14 MARY JANE O'HARA: Yes. Judge Stuard
15 spoke about that.

16 ATTY. BAILEY: Right.

17 MARY JANE O'HARA: You know, the cloak of
18 innocence.

19 ATTY. INGRAM: He did a much better job.

20 ATTY. BAILEY: I'm sure he did a much
21 better job. I'm just bumbling along here.

22 Now, we talk about the standard of proof, proof
23 beyond a reasonable doubt, and in a civil case it's

1 different. It's where somebody sues for money damages, maybe
2 for a car crash, okay?

3 MARY JANE O'HARA: Okay.

4 ATTY. BAILEY: Their burden of proof is
5 only by a preponderance of the evidence. If you have a
6 scale, whoever tips that scale just a little bit is going to
7 win. Instead of a scale let's use an imaginary box. I'm
8 going to steal John Juhasz's box.

9 MARY JANE O'HARA: Okay.

10 ATTY. BAILEY: I like that box.

11 ATTY. JUHASZ: The royalties will be
12 coming in.

13 ATTY. BAILEY: You'll get the royalties
14 when Napster gives them to you.

15 And we've got this imaginary box and we got to fill
16 it with evidence because the burden of proof is on us. You
17 understand the defendant doesn't have to put anything into
18 that box, she doesn't have to take anything out of that box?

19 MARY JANE O'HARA: I understand.

20 ATTY. BAILEY: We have to put stuff into
21 the box. Okay. And in a civil case whoever fills that box
22 over just half way with evidence is going to win, okay, but
23 in a criminal case the burden is on us, the people of the

1 State. We got to fill that box almost all the way to the
2 top, maybe an inch away or half an inch away. It's up to you
3 and each individual juror to decide where you want to draw
4 the line on that box, but it's up to the point where you are
5 firmly convinced of the truth of the charge, the elements,
6 okay, to a moral certainty using your reason and your common
7 sense. And that's something that you're used to doing in
8 everyday life, right? I mean, when you raise your children
9 and when you get married, when you get a job or decide to
10 change jobs or decide to retire or buy a house, you use your
11 reason and common sense, don't you?

12 MARY JANE O'HARA: Absolutely.

13 ATTY. BAILEY: Okay. There are pros,
14 there are cons. You may reject several houses that you
15 looked at, maybe a whole lot of houses. When you go out to
16 buy a house you want to know, you know, is there water
17 problems, is the roof okay, foundation problems or whatever,
18 but eventually you get to the point where you find a house
19 that looks right and the pros outweigh any cons and you're
20 firmly convinced that it's the right thing to do, right, --

21 MARY JANE O'HARA: Yes.

22 ATTY. BAILEY: -- okay, to a moral
23 certainty?

1 MARY JANE O'HARA: Yes.

2 ATTY. BAILEY: Okay. So it's not a
3 magical standard that we ask you to look at, it's something
4 you're used to doing every day.

5 Now, there are different types -- oh, you understand
6 when we talk about proof beyond a reasonable doubt it's not
7 proof beyond all doubt or beyond a shadow of a doubt or
8 beyond any doubt? It's not a hundred percent proof, okay,
9 because you can't prove anything a hundred percent. There's
10 always some possible or imaginary doubt in there. That's why
11 the box isn't full completely to the top, okay?

12 MARY JANE O'HARA: Okay.

13 ATTY. BAILEY: The judge says we have to
14 prove our case beyond a reasonable doubt. He doesn't use the
15 term beyond all doubt or beyond any doubt. Okay. Shadow of
16 a doubt, that's an Alfred Hitchcock movie title. It makes
17 for a good movie title, but there's no such animal in
18 criminal law in real life.

19 And it's the same burden of proof that we have to
20 meet in every criminal case whether it's a shoplifting case
21 or a burglary case or a robbery or a rape or a murder or a
22 possible capital murder case like this one where the death
23 penalty is an option. Okay. That burden doesn't change,

1 it's still the same burden on us, the people of the State.
2 Do you agree with that?

3 MARY JANE O'HARA: Yes, I do.

4 ATTY. BAILEY: Now, there are different
5 types of evidence that we can use to put evidence into this
6 box to fill it up with evidence and there's something called
7 direct evidence where a witness comes in and testifies to
8 what he or she has learned through the use of his or her five
9 senses. For example, "I saw the sky and it was blue" or "I
10 smelled the lemon and it was citroney," or/and "I touched the
11 surface and it was vibrating." That's a word. It's a new
12 example.

13 And there's another type of evidence that we can
14 use. It's sort of a roundabout type of evidence that you're
15 used to using in your everyday life. It's where you're
16 presented with a fact or series of facts and you have to draw
17 a logical deduction to another fact or set of facts. Okay.
18 We'll call that circumstantial evidence. If you watch the
19 old TV reruns sometimes people don't know what those terms
20 mean, like on LA Law or on the old black and white Perry
21 Masons, they misuse the term, but let me give you an example
22 of that.

23 Let's say you live in a two-story house and you go

1 to bed and your bedroom is on the second floor. It's
2 nighttime and you look out through your bedroom window across
3 the neighborhood and it's a nice night. The moon is beaming,
4 the stars are twinkling, there's not a cloud in the sky, and
5 as far as you can see across the neighborhood it's perfectly
6 dry.

7 You close the blinds, get into bed. The radio is on
8 low and you hear the announcer say, "Folks, there's a cold
9 front coming in tonight and I expect we're going to get a
10 storm before morning," and you turn off the radio and you
11 fall asleep. But sometime during the night you're awakened
12 by a distant booming sound up in the sky and you look toward
13 the window, and even though the blinds are drawn, you can see
14 a flash of light and a couple seconds later there's a distant
15 boom. And then a minute later there's another flash of light
16 outside and closer in time, maybe a second away, there's
17 another boom up in the sky. And then suddenly there's this
18 great big flash of light outside. You can't see what it is
19 because the blinds are drawn, but instantaneously there's a
20 big cracking, ripping, booming sound above the house and a
21 pitter-patter on the roof and a heavy drumming sound, and you
22 fall back asleep and sometime later you awaken. You go back
23 to the window. You open up the blinds and you look out and

1 it's a nice day. The sun is shining, there's not a cloud in
2 the sky, but as far as you can see across the neighborhood
3 the streets are running with water, the rooftops are all wet,
4 there are drops of water dripping down the leaves of the
5 trees, and there's no fire plug nearby for some car to hit it
6 and spew water all over the neighborhood, right? You know
7 what happened during the night, don't you?

8 MARY JANE O'HARA: (Nods head
9 affirmatively.)

10 ATTY. BAILEY: What happened?

11 MARY JANE O'HARA: Right, a thunderstorm.

12 ATTY. BAILEY: Right, a thunderstorm. And
13 you know that beyond any reasonable doubt, don't you?

14 MARY JANE O'HARA: Yes.

15 ATTY. BAILEY: Okay. Based on all the
16 facts and circumstances. You didn't see the rain with your
17 own eye and you didn't see the lightening with your own eye,
18 but from all the facts and circumstances that were presented
19 you know that that was all that happened.

20 MARY JANE O'HARA: (Nods head
21 affirmatively.)

22 ATTY. BAILEY: Now, there may be some
23 limitations to circumstantial evidence. You may not know how

1 long the rain fell or how much water came down unless you had
2 a measuring device like they have at the airport, but you
3 know beyond any reasonable doubt there was a thunderstorm,
4 right?

5 MARY JANE O'HARA: (Nods head
6 affirmatively.)

7 ATTY. BAILEY: There's room there for some
8 possible or imaginary doubt. You could imagine that ALF and
9 his martian buddies flew by in a flying saucer during the
10 night and put on a sound and light show and sprinkled the
11 ground with some wet stuff, but that would be a foolish or
12 imaginary doubt, wouldn't it?

13 MARY JANE O'HARA: Correct.

14 ATTY. BAILEY: Okay. Now, that's
15 circumstantial evidence. Now, we can fill that box with
16 circumstantial evidence and it's just as good as direct
17 evidence. Okay. And if we convince you beyond a reasonable
18 doubt of the circumstantial elements -- the evidence of the
19 elements of the crime charged, you can return a conviction
20 based on that, couldn't you?

21 MARY JANE O'HARA: Yes.

22 ATTY. BAILEY: Now, there is a reason that
23 we have to use circumstantial evidence sometimes because you

1 can imagine that when people plan very serious crimes, like
2 aggravated murders, they usually don't stand out at the
3 courthouse steps at noon and announce to the whole world what
4 they're planning to do, right?

5 MARY JANE O'HARA: (Nods head
6 affirmatively.)

7 ATTY. BAILEY: They may do that in secret.
8 And to get inside a person's mind to know what a person's
9 purpose was we may have to rely on things, if we got them,
10 like letters or phone calls to see, you know, if a person
11 says in the letters or phone calls what they were planning.
12 You could look at that as circumstantial evidence, couldn't
13 you?

14 MARY JANE O'HARA: Yes.

15 ATTY. BAILEY: Now, you understand, and I
16 take it you could pile up evidence on evidence and make your
17 own decision as to if there's enough and follow what the
18 judge tells you?

19 MARY JANE O'HARA: (Nods head
20 affirmatively.)

21 ATTY. BAILEY: Okay. You believe people
22 should be held accountable for their actions?

23 MARY JANE O'HARA: Yes.

1 ATTY. BAILEY: Now, you understand that
2 people can plan and plan in great detail how they're going to
3 commit a crime but sometimes, you would agree, that criminals
4 do some really, really stupid things and get caught, right?
5 You've probably heard the stories about the robber who goes
6 into the bank. He's got a mask on, a getaway driver outside,
7 and he's got a gun and he's got a stick-up note and he hands
8 it to the teller. It's on the back of an envelope and it
9 says, "Give me all your money," and the teller gives him the
10 money. He runs out and takes off and he leaves the note
11 behind. When the teller turns the note over there's the
12 perpetrator's name and address, right? Or the burglar who
13 climbs in through the window and drops his wallet with his
14 identification and leaves it at the scene.

15 Okay. So in spite of all the planning that's done
16 sometimes, because of the stupid things criminals do, they
17 get caught, right?

18 MARY JANE O'HARA: (Nods head
19 affirmatively.)

20 ATTY. BAILEY: Okay. You understand --
21 you watch -- where is it? Oh, well. You ever see Court TV?

22 MARY JANE O'HARA: Yes.

23 ATTY. BAILEY: Okay. On Court TV they

1 have cases from different parts of the country.

2 MARY JANE O'HARA: Yes.

3 ATTY. BAILEY: You understand that what
4 they do on Court TV because it's from different parts of the
5 country, the states have different rules, each state is
6 allowed to set up their own systems basically.

7 MARY JANE O'HARA: Yes.

8 ATTY. BAILEY: So the courts don't always
9 run the same, the trials don't work the same way in different
10 parts of the country.

11 MARY JANE O'HARA: Yes.

12 ATTY. BAILEY: And in Ohio our judges
13 don't let you take notes. Okay, back in school you could
14 take notes.

15 MARY JANE O'HARA: I was wondering about
16 that.

17 ATTY. BAILEY: Right. No, you can't.

18 MARY JANE O'HARA: That was one of the
19 questions. I'm glad you covered that, too.

20 ATTY. BAILEY: And there's a reason for
21 that, okay, because the judges want you to pay close
22 attention to the witnesses and watch their demeanor as they
23 testify. And if everybody took notes, some people take

1 better notes than others. Remember back in college you might
2 have borrowed somebody's notes or somebody wanted to borrow
3 your notes, okay, because you were a better note taker. And
4 if everybody took notes they may argue -- they may miss the
5 next piece of testimony because they're writing something
6 down and they may argue over their notes, who had the better
7 notes, and if they didn't write it down the same, they
8 misheard it, they would be arguing over notes.

9 MARY JANE O'HARA: Yes.

10 ATTY. BAILEY: And so they want you to
11 ignore note taking and concentrate on the witnesses, watch
12 them, listen to them. And because there are 12 of you, you
13 should be able to collectively remember the testimony over a
14 week and a half. Well, maybe three weeks in this case
15 because we're only going to go probably three and a half days
16 each week because of different scheduling problems, okay, for
17 the next three weeks I would expect in the first phase. And
18 you're going to have to rely on your recollection and there
19 aren't going to be any instant replays. It's not like sports
20 programs on TV where they have instant replays. Okay. You'd
21 be able to do that, I take it, right?

22 MARY JANE O'HARA: Yes.

23 ATTY. BAILEY: Okay. And you can't go out

1 to investigate on your own. We had a juror do that in one
2 case and it caused a mistrial. Now, they do it on TV
3 sometimes. I think, what is it, a Hawaii 5-0 episode?

4 MARY JANE O'HARA: I missed that one.

5 ATTY. BAILEY: And a Matlock episode.

6 MARY JANE O'HARA: Missed that one, too.

7 ATTY. BAILEY: Okay. And there was a
8 movie I think. But that's a no-no, you just can't do that,
9 and because we don't want to do it all over again. We've
10 been going for five weeks now on jury selection alone. Not
11 going, not going to do that, right?

12 MARY JANE O'HARA: (Nods head
13 affirmatively.)

14 ATTY. BAILEY: And you understand that
15 you're stuck with the questions that the lawyers ask. In
16 some jurisdictions on Court TV they allow the jurors to
17 submit questions to the judge and the judge may ask the
18 witness the question. That's not going to happen here, okay?
19 And because we're lawyers, we go to law school, we are
20 trained to establish with questions the elements or tear down
21 the elements generally, okay, so our questions are going to
22 be geared toward those elements of the crime.

23 There may be some questions you have. If you've got

1 some special interest in cooking, let's say if you were a
2 chef, you may wonder what people were eating. Or shoes, if
3 you sold shoes you may wonder what people are wearing. But
4 unless it's relevant to the case -- if it's not a case where
5 there were footprints in the snow or something, that type of
6 question would never get asked and answered. So you might
7 have some unanswered questions that will never get answered,
8 right?

9 MARY JANE O'HARA: Okay.

10 ATTY. BAILEY: And if we were able to
11 establish the element of the crime or crimes to your
12 satisfaction beyond a reasonable doubt, you would still be
13 able to return a conviction even though you might have had
14 some unanswered questions, right?

15 MARY JANE O'HARA: Right.

16 ATTY. BAILEY: Okay.

17 MARY JANE O'HARA: I have a question.

18 ATTY. BAILEY: Sure.

19 MARY JANE O'HARA: In deliberation, not
20 new questions but part of the testimony, in Ohio is that --
21 if you say I think I remember this part, can you ask for
22 that?

23 ATTY. BAILEY: I was just going to get to

1 that.

2 MARY JANE O'HARA: I'm just going to let
3 you talk. I won't ask questions.

4 ATTY. BAILEY: Jurors sometimes ask the
5 question can we have the testimony of so and so? The answer
6 to that generally is going to be no.

7 MARY JANE O'HARA: Okay.

8 ATTY. BAILEY: I would expect the judge is
9 going to tell you that you're not going to be able to get a
10 transcript. You're going to have to rely on the collective
11 recollection of all 12 of you.

12 MARY JANE O'HARA: Okay.

13 ATTY. BAILEY: Okay. And there's a reason
14 for that. Unlike O.J. Simpson or the Menendez brothers or
15 other high publicity Court TV cases, we don't have the
16 millions of dollars that it took to get those transcribing
17 systems. Our court reporters are excellent, but they don't
18 have that ability to get out instant transcripts.

19 MARY JANE O'HARA: I understand.

20 ATTY. BAILEY: And we can't wait a week
21 for them to prepare a transcript for each -- every time the
22 jury has a question.

23 MARY JANE O'HARA: Okay.

1 ATTY. BAILEY: So that's why the jurors
2 are told they have to rely on their collective recollection.
3 You understand --

4 MARY JANE O'HARA: I understand.

5 ATTY. BECKER: -- that you won't be
6 getting instant transcripts?

7 MARY JANE O'HARA: Okay.

8 ATTY. BAILEY: Okay. Now, the judge also
9 mentioned you're going to be an alternate, you're being
10 considered for an alternate juror's position. And I expect
11 if you're selected here as an alternate juror you understand
12 folks sometimes feel gosh, I feel like a fifth wheel here.
13 I'm sitting, I may be second or third alternate or something
14 like that. But we're highly experienced attorneys. We've
15 handled quite a few of these cases over the years. We've had
16 cases where we've run out of all of our alternates.
17 Hopefully nothing happens to anybody on the jury, but because
18 of the fact that people get sick.

19 MARY JANE O'HARA: Sure.

20 ATTY. BAILEY: They may have family
21 emergencies that come up, who knows what can happen, but
22 there have been times when we've used all the alternates, so
23 it's important that you pay just as close attention as if you

1 were sitting in one of those 12 seats, okay, because you
2 never know when you're going to get moved into one of those
3 seats.

4 MARY JANE O'HARA: Yes.

5 ATTY. BAILEY: Okay. You wouldn't have
6 any problem with that?

7 MARY JANE O'HARA: No.

8 ATTY. BAILEY: Okay. Now, at the end of
9 this case, at the end of the first phase after the testimony
10 is in and the judge instructs you on the law and you and the
11 other jurors go out to deliberate on your verdict, you're
12 going to be sequestered. You'll get notice the day before
13 that most likely, and you'll be told to pack your belongings
14 and stuff that you need to stay for maybe a couple of nights.
15 And each jury is different, okay. We've had juries on
16 capital cases in the first phase come back anywhere from an
17 hour and a half up to five days.

18 MARY JANE O'HARA: Uh-huh.

19 ATTY. BAILEY: We don't know how long your
20 jury will take, whatever amount of time is necessary for you
21 to consider everything and render your verdict. And let's
22 say you and the other jurors come back with a guilty beyond a
23 reasonable doubt verdict of aggravated murder and one or more

1 specifications, we go into a second phase. And there would
2 be a break there maybe for a couple days or a week and we
3 would come back. And generally a second phase takes anywhere
4 from one to three days and again you'd be sequestered when
5 you deliberate. Those sequestrations, would they cause you
6 any undue hardship?

7 MARY JANE O'HARA: No.

8 ATTY. BAILEY: Okay. I mean, they put you
9 up in a hotel and feed you.

10 MARY JANE O'HARA: Correct.

11 ATTY. BAILEY: And when you deliberate
12 there's no one-on-one, you have to wait to deliberate until
13 all 12 of you are together.

14 MARY JANE O'HARA: I understand.

15 ATTY. BAILEY: Now, another thing,
16 sympathy, it's normal for one human being to feel sympathy
17 for another human being, but you understand that sympathy --
18 when you go in to deliberate you have to be able to set aside
19 feelings of sympathy that you might have for the defendant
20 and base your verdict solely on the testimony and evidence
21 that you hear and the instructions of law given to you by the
22 Court.

23 MARY JANE O'HARA: (Nods head

1 affirmatively.)

2 ATTY. BAILEY: Okay. So when you get
3 inside your jury room can you set aside, be conscientious in
4 your deliberations and base your verdict solely on the
5 testimony and the evidence and the instructions of law given
6 to you by the judge and set aside all thoughts whatsoever of
7 sympathy that you might have for this defendant?

8 MARY JANE O'HARA: Yes.

9 ATTY. BAILEY: Now, do you have any
10 questions that have come up during this time?

11 MARY JANE O'HARA: No. I think I jumped
12 right in when I needed to.

13 ATTY. BAILEY: Okay. Now, I think you'd
14 agree that we have certain obligations of citizenship as
15 citizens in this country. One obligation is when it's
16 election time that we learn what we can about the candidates
17 and the issues and go out and cast a ballot and make sure our
18 system of democracy works.

19 MARY JANE O'HARA: Yes.

20 ATTY. BAILEY: Another obligation is if
21 it's war time we may have an obligation to serve in the
22 military if we're called. We've got young folks that are
23 overseas now in several places, okay, and that's an important

1 obligation of citizenship, to make sure the country stands
2 strong. Okay.

3 There's another obligation of citizenship, when
4 we're summonsed in to serve as jurors in cases. To make sure
5 our system of justice works it's important that we get folks
6 from all walks of life with different viewpoints and
7 experiences to sit on those juries, and especially in this
8 most serious of criminal cases, a capital murder case. Okay.
9 Would you be willing, and even though it may cause us some
10 hardships in our personal lives, we may have to jockey some
11 things around, change our daily schedules for a while, would
12 you be able to do that and undertake this obligation of
13 citizenship?

14 MARY JANE O'HARA: Yes. I think it's very
15 important if I was chosen, yes.

16 ATTY. BAILEY: Okay. Now I'm done with my
17 questions and defense counsel will have an opportunity to
18 address you. Thank you.

19 MARY JANE O'HARA: Okay.

20 THE COURT: Mr. Juhasz.

21 ATTY. JUHASZ: Thank you. Ms. O'hara,
22 good afternoon.

23 MARY JANE O'HARA: Hello.

1 ATTY. JUHASZ: You've been up there for a
2 little while. You doing okay? You need some water or
3 anything?

4 MARY JANE O'HARA: No, I'm okay.

5 ATTY. JUHASZ: All right. If you do while
6 we're talking, then please let me know and we'll make sure
7 you get some. Fair enough?

8 MARY JANE O'HARA: Thank you.

9 ATTY. JUHASZ: My name is John Juhasz. My
10 friend Jerry Ingram and I over there are representing Donna
11 Roberts who, as you know from everything you've heard, is on
12 trial for her life. We take that responsibility of
13 representing Donna very seriously, and this lengthy and
14 laborious process that we're involved in is an effort to get
15 a fair and impartial jury, the same kind of jury that you
16 would probably want if you were sitting over there charged
17 with an offense or somebody you cared about, a family member
18 or a loved one. You would want that same kind of impartial
19 jury, I take it?

20 MARY JANE O'HARA: Absolutely.

21 ATTY. JUHASZ: Okay. I tell you that so
22 that you know why we're asking some of these questions that
23 probably seem just a little bit inane to you and ask you to

1 sort of humor us as we go along doing that. I will try not
2 to repeat. I may elaborate slightly on something Mr. Bailey
3 said, but I'm going to try not to go over the exact same
4 things that Mr. Bailey went over with you.

5 Probably the most important thing that I can tell
6 you as we're standing here is Jerry likes to say that this is
7 sort of like a job interview. It's a pretty short-term job
8 but it's an important job, and the thing about a job
9 interview is we're interviewing you to see if you're
10 comfortable taking this job and if we're comfortable having
11 you take this job. Like any job interview you would go for,
12 you would also want to find out some things about the job
13 you're about to take on.

14 MARY JANE O'HARA: Absolutely.

15 ATTY. JUHASZ: So we're trying to find out
16 how you feel about certain things and also sort of give you
17 an idea to the best that we're able of some of the things
18 that you might expect. It's a little bit different from the
19 normal job interview, however, since you didn't apply for
20 this job, you got sent a little piece of paper asking you to
21 come down here.

22 You have known, from what you told Mr. Bailey, since
23 April the 8th that this was a potential death penalty case,

1 correct?

2 MARY JANE O'HARA: Correct.

3 ATTY. JUHASZ: And because this process
4 has taken so long you've had some time to think about that.
5 Tell me your thoughts about the responsibility of, your
6 thoughts about acting as a juror and taking on the
7 responsibility of that in a case this important. What do you
8 think about that?

9 MARY JANE O'HARA: I feel it's a very
10 serious obligation and I feel that Judge Stuard's
11 instructions and guidance would be the most valuable part of
12 the job so that I could follow, as I would want someone else
13 to follow, that I could follow to according to the law and do
14 the best job.

15 ATTY. JUHASZ: All right.

16 MARY JANE O'HARA: I'm wet behind the ears
17 so excuse me when I don't get it just right.

18 ATTY. JUHASZ: That's okay. In fact, one
19 of the things that I usually tell folks when I'm up here
20 talking to them is that, and actually sometimes I even use
21 the word arrogant, that we're a little bit arrogant to the
22 extent that we study this stuff, we go to law school, we
23 practice it, and we sort of yank you out of your life and

1 come in here, give you a whole bunch of rules that we're used
2 to dealing with like second nature. It would be -- you used
3 to be an x-ray tech, correct?

4 MARY JANE O'HARA: Correct.

5 ATTY. JUHASZ: All right. It would be
6 like you saying Juhasz, quit practicing law for a couple
7 days, come on in here and help me do X-rays, and, you know, I
8 don't know anything about that stuff.

9 MARY JANE O'HARA: Exactly.

10 ATTY. JUHASZ: So if you have questions,
11 please let us know. I mentioned a minute ago that it's kind
12 of like a job interview and I am interested in hearing what
13 you have to say. So understand I'm not trying to put you on
14 the spot if I ask you a question, it is that I'm more
15 interested in hearing what you have to say than listening to
16 the rambling of my own voice. That's one of the reasons why
17 we're doing this.

18 The only answers that you can give me that would be
19 wrong are answers that you think I want to hear rather than
20 what you really think. We are not here to change anybody's
21 views about anything, all right?

22 You know from what Judge Stuard told you that a
23 couple things we want to talk about this afternoon are

1 pretrial publicity and folks' views on the death penalty, and
2 I want to talk to you first about pretrial publicity. I want
3 you to understand that, and I mention this because sometimes
4 jurors seem nervous about this, when you were watching TV or
5 reading the newspaper and picking up snippets of information
6 about this case and you had no idea you were going to get a
7 summons to be a potential juror on this case, so I want you
8 to understand and relax a little bit, that there's nothing
9 wrong with the fact that you heard things about this case.
10 But because you have, it makes sense to you that you would --
11 we would want to ask you questions about that. That makes
12 sense, doesn't it?

13 MARY JANE O'HARA: Yes, it does.

14 ATTY. JUHASZ: I went out to a school last
15 week in Boardman to speak to some students and told them that
16 we were in the middle of this process and I sort of gave them
17 an example. And I pointed to one student and said, "Now
18 let's assume that he accuses you of doing something," and
19 let's assume that a couple of other students say, "Well, you
20 know, I heard Mary, she's a snob and she's not really nice to
21 people and she cheats on tests," and Mary is looking at me
22 like none of that stuff is true. And I said you understand
23 one of the reasons -- you wouldn't want those people deciding

1 your case, would you? She said no, because they have bad
2 impressions about me that aren't true. So we need to talk
3 about that and find out what your impressions are.

4 You have written down on the questionnaire some of
5 the things that you remember picking up along the way and you
6 also mentioned some things to Mr. Bailey. Your aunt, as I
7 understand it, tried to tell you some stuff and you're --

8 MARY JANE O'HARA: Yes.

9 ATTY. JUHASZ: -- waving her off?

10 MARY JANE O'HARA: Absolutely not. Can I
11 say one thing?

12 ATTY. JUHASZ: Yeah, sure.

13 MARY JANE O'HARA: When Mr. Bailey was
14 first asking me what I'd heard and I was kind of stumbling,
15 the reason is when I came for the first, when I was summonsed
16 originally and Judge Stuard says you don't want to know
17 anything, that night I filled out the questionnaire and I
18 have tried my darndest to keep a blank mind. So when he
19 asked me what I know, I've done everything in my power to be
20 totally -- to wipe the slate clean as we were instructed.

21 ATTY. JUHASZ: All right. We appreciate
22 that. It's sometimes a tough thing to do.

23 MARY JANE O'HARA: That's why I stumbled

1 when you said, and thank goodness you had what I wrote down,
2 but I really try very hard. I worked for a physician and he
3 wrote in a resume for me, or a whatever you call it, that I
4 have a mind like a steel trap. But in this case, and I
5 unfortunately remember details, you know, you like to -- but
6 in this case that is why I have tried since that day to keep
7 a very clean slate.

8 ATTY. JUHASZ: Okay. And we appreciate
9 that and we appreciate your honesty in telling us like your
10 aunt tried to talk and you're waving her off. Let me ask you
11 though, us having talked about all that, do you have an
12 impression about Donna now from the things that you have read
13 or heard in the paper or on TV?

14 MARY JANE O'HARA: I think that I wrote
15 that everything was so vague and I really don't know if I had
16 the right case. I read the paper all the time but -- wait a
17 minute. These are my travel dates. I read the paper. I was
18 in Chicago, I was in --

19 ATTY. JUHASZ: The days you have marked
20 down.

21 MARY JANE O'HARA: -- Florida, I was in
22 California. And at that point -- I have a new grandchild in
23 Chicago so I spent quite a bit of time there.

1 ATTY. JUHASZ: That's No. 4 then?

2 MARY JANE O'HARA: That's No. 4 grandson,
3 yes.

4 ATTY. JUHASZ: The recent arrival?

5 MARY JANE O'HARA: Yes.

6 ATTY. JUHASZ: Congratulations.

7 MARY JANE O'HARA: Thank you. So I have
8 been out of the loop for quite a bit, so to speak.

9 ATTY. JUHASZ: All right. It's a curious
10 combination, you're out of the loop but you have a mind like
11 a steel trap so you did pick up some things?

12 MARY JANE O'HARA: Yes.

13 ATTY. JUHASZ: And do you have an
14 impression from those things you picked up that she's
15 probably involved in this case?

16 MARY JANE O'HARA: I don't think so. I've
17 read, the little bit I read I got the impression that it was
18 possibly a husband and possibly -- I don't know. It was so
19 vague, and not really.

20 Another thing that affected me quite badly as far as
21 trying to come with a full slate is media can very harshly
22 convict on the news and in the paper. And I was very
23 affected by Dr. Dickstein because I felt the media just --

1 let's not even go there. It was very devastating to me, the
2 outcome, because he was prosecuted and convicted in the press
3 as far as I'm concerned.

4 ATTY. JUHASZ: Uh-huh.

5 MARY JANE O'HARA: I hope I'm not yakking
6 too much.

7 ATTY. JUHASZ: Not at all. In fact, I was
8 going to ask you, if I remember -- yes. And since Mr. Bobby
9 is not here from the Tribune -- well, even if he were here I
10 would do this, quite frankly, but since he's not here let's
11 take off on the news media a little bit because you put in
12 one of your questions how the media can switch things around.

13 MARY JANE O'HARA: Oh, definitely.

14 ATTY. JUHASZ: You were involved in a
15 situation that had to do something with a quarry?

16 MARY JANE O'HARA: Yes. Our home is built
17 in a rock quarry and 1500 feet from my property they are
18 blasting for rock.

19 ATTY. JUHASZ: That's pretty close.

20 MARY JANE O'HARA: And it's beautiful
21 there and I don't want it destroyed. And I did contact the
22 State and they found them in gross violation, but mining has
23 -- well, lobbyists and whatever, and it's very difficult to

1 get into. Yeah, they say, you know, we can't prove anything
2 and yes, they were in gross violation, but they said they
3 aren't going to do it anymore, so.

4 But the news, what the TV did, they come and
5 interview you for 45 minutes and there's a 30 second clip on
6 TV, so I definitely understand. And plus the paper, too, as
7 the reporter writes things down they aren't always going to
8 get the right facts.

9 ATTY. JUHASZ: And I'm guessing from that
10 45 minute interview probably not the 30 seconds that you
11 would have picked if they said, "Look, we appreciate all this
12 information but we have to pick out 30 seconds. Do you want
13 to pick it out?"

14 MARY JANE O'HARA: Exactly.

15 ATTY. JUHASZ: It's probably not the same
16 30 seconds you would have picked out?

17 MARY JANE O'HARA: Sure.

18 ATTY. JUHASZ: Okay. So you do have some
19 experience, not only from the case that we've talked about,
20 in your personal situation, that the media can put a twist on
21 things and it may not be accurate, correct?

22 MARY JANE O'HARA: Sure.

23 ATTY. JUHASZ: All right. So you had all

1 this information but I take it you're not necessarily putting
2 a lot of stock in even the things that you do remember
3 because of how the media --

4 MARY JANE O'HARA: Absolutely.

5 ATTY. JUHASZ: -- twists things? All
6 right. Mr. Bailey, as he told you, stole my box example
7 that I've been using actually for a number of years because
8 I'm getting old, and I want to talk about it for a second
9 right now in connection with pretrial publicity. You
10 understand that using my silly little box that the State of
11 Ohio has to fill up that box with evidence, if they can,
12 beyond the line called reasonable doubt. You appreciate
13 that?

14 MARY JANE O'HARA: Yes.

15 ATTY. JUHASZ: You have heard in this case
16 how much evidence as of right now?

17 MARY JANE O'HARA: None.

18 ATTY. JUHASZ: None, exactly right. And
19 as a result of that, because you've heard no evidence, that
20 box has to be empty right now. Do you see that?

21 MARY JANE O'HARA: Correct.

22 ATTY. JUHASZ: Do you have any problem
23 because of the things that you have heard or read or seen

1 about Donna Roberts and about Mr. Jackson and the thing your
2 aunt said the other day, do you have any problem saying to
3 me, to Mr. Ingram, to Donna Roberts and to the judge, "Look,
4 that box is empty. Those things I've heard are not in
5 there"?

6 MARY JANE O'HARA: Absolutely no problem.

7 ATTY. JUHASZ: All right. If you are
8 selected as a juror you may hear things during the course of
9 the trial that you go you know what, I didn't even remember
10 this stuff when I was talking to the judge and Bailey and
11 Juhasz, but now that I hear somebody testify about this, I
12 read something about that in the paper. That's okay. Here's
13 the reason I bring it up, however. One of your jobs as a
14 juror is to test what we call the credibility, the
15 believability of every witness who gets on the stand. You
16 appreciate that?

17 MARY JANE O'HARA: Yes.

18 ATTY. JUHASZ: If what that witness says
19 squares with something that you realize later that you read
20 in the paper or heard on TV 21 or whatever, you can't say to
21 yourself well, you know what, that must be true because I
22 read that in the paper. Do you see that?

23 MARY JANE O'HARA: Right, absolutely.

1 ATTY. JUHASZ: Okay. No problem with
2 that?

3 MARY JANE O'HARA: No.

4 ATTY. JUHASZ: Very good. You, I think,
5 know now what the government's basic allegations are, that
6 they're saying that Donna conspired, plotted with, got
7 together and made a plan with Mr. Jackson to kill
8 Mr. Fingerhut. You might throughout the course of the trial
9 if you're selected as a juror hear evidence that makes you
10 say well, you know what, I think that Mr. Jackson was
11 involved in this and Mr. Jackson did what the government says
12 that he did. My point in bringing that up is you understand,
13 don't you, that this trial is not about Nathaniel Jackson,
14 it's about Donna Roberts?

15 MARY JANE O'HARA: Absolutely.

16 ATTY. JUHASZ: And even if Nathaniel
17 Jackson is guilty as all sin, the question in this trial is
18 whether Donna Roberts did anything to plan that with him or
19 help him with that plan. Do you see that?

20 MARY JANE O'HARA: Yes.

21 ATTY. JUHASZ: No problem separating the
22 two?

23 MARY JANE O'HARA: No.

1 ATTY. JUHASZ: Okay. You have heard some
2 things about letters as well?

3 MARY JANE O'HARA: Yes.

4 ATTY. JUHASZ: Okay.

5 MARY JANE O'HARA: The only thing I heard,
6 and I think it was right before we were called in, is letters
7 were put into evidence. That's the only, that's the whole
8 extent of it.

9 ATTY. JUHASZ: All right. Part of what
10 the State may try to use as evidence in this case may be
11 letters written by Donna and telephone conversations,
12 recorded telephone conversations between Donna and Nathaniel
13 Jackson. I will tell you now that some of those, if you read
14 them or hear them, are sexually explicit, and I'm going to
15 even go a step further and tell you some of them are
16 offensive. Now, you may be offended when you hear those
17 things, but I bring it up because you understand that even if
18 you don't approve of things that are said or written as far
19 as being sexually explicit or offensive, that does not
20 substitute for evidence about whether she planned with him to
21 carry out a crime and they did something about it? Do you
22 see that?

23 MARY JANE O'HARA: Absolutely. Everybody

1 is different in how they express themselves or whatever.

2 ATTY. JUHASZ: All right. And so even
3 though at the end of the trial you may be saying, you know,
4 she's a little over the top for me in her personal
5 preferences, that's no reason to convict somebody, you agree
6 with that?

7 MARY JANE O'HARA: Absolutely.

8 ATTY. JUHASZ: And so even though there's
9 been all this media hype and coverage of the case and all
10 this discussion we're having today about letters and tapes,
11 if at the end of the case you find that the State of Ohio has
12 not filled up that imaginary box that we've referred to
13 beyond the line called reasonable doubt, would you have any
14 hesitation whatsoever in voting not guilty?

15 MARY JANE O'HARA: No. I would definitely
16 want to use the instructions of Judge Stuard. And, as I
17 said, this is all so new to me, but this is foremost in my
18 mind, that he is running the ship here and to follow his
19 directives.

20 ATTY. JUHASZ: He is -- I'm going to
21 modify what you said just a little bit.

22 MARY JANE O'HARA: Okay.

23 ATTY. JUHASZ: Okay. That's okay. He's

1 running the ship in that he's going to serve as the umpire if
2 the lawyers have disagreements about evidence or procedure,
3 but one of the things that he'll tell you -- and he runs the
4 ship because he gives you instructions about how to do your
5 job.

6 MARY JANE O'HARA: That's what I meant,
7 exactly.

8 ATTY. JUHASZ: But you understand that
9 when it comes to deciding what factually occurred in this
10 case, that's your job, not his?

11 MARY JANE O'HARA: Yes, I do.

12 ATTY. JUHASZ: You're clear on that?

13 MARY JANE O'HARA: Oh, definitely.

14 ATTY. JUHASZ: He will give you the
15 instructions.

16 MARY JANE O'HARA: It's the instructions
17 from him how to interpret.

18 ATTY. JUHASZ: Okay. Let's talk a little
19 bit, if we can, about your views on the death penalty. And
20 again, understand nobody is here to change your mind. I'm
21 interested in hearing what you think and how you feel.

22 One of the things that you mentioned I think maybe
23 in your questionnaire but certainly when you were talking

1 with Mr. Bailey is that the death penalty is appropriate
2 punishment for some cruel crimes. Do you remember using that
3 word?

4 MARY JANE O'HARA: Yes.

5 ATTY. JUHASZ: And I'm not sure that you
6 had an opportunity to sort of tell us what you mean by that.
7 Would you give me some idea what you mean by that?

8 MARY JANE O'HARA: Just done with such
9 malice; cruelty, malice. I guess, you know, as you were
10 talking about, or was it Attorney Bailey that mentioned
11 about, yes, the pencil.

12 ATTY. JUHASZ: Dropping the pen?

13 MARY JANE O'HARA: Yes. Planning this and
14 maybe causing such cruelty to the person is what I meant by
15 cruelty.

16 ATTY. JUHASZ: Okay.

17 MARY JANE O'HARA: Malice, such cruelty
18 and malice and planning and not just, you know, as he again
19 used examples of an accident. If it was -- when testimony
20 would mean that there's just such malice, that's what I meant
21 by a crime of cruelty.

22 ATTY. JUHASZ: All right. Let's follow up
23 on that for a couple of minutes. First of all, you talked to

1 Mr. Bailey about different types of homicide offenses and I
2 think you agreed with him, as you just said to me now, some
3 of them don't deserve the death penalty, correct?

4 MARY JANE O'HARA: Correct.

5 ATTY. JUHASZ: There are some that clearly
6 do in your mind. And are there other offenses other than
7 homicide offenses for which you think the death penalty might
8 be appropriate?

9 MARY JANE O'HARA: I've never given it any
10 thought.

11 ATTY. JUHASZ: Okay.

12 MARY JANE O'HARA: I'm sorry. I would
13 have to really consider it.

14 ATTY. JUHASZ: That's all right. And
15 there's something else that I should have told you when I was
16 sort of telling you the ground rules for our discussion.
17 These questions are hard questions. As Mr. Bailey said, this
18 is not his first death penalty case. It's not my first death
19 penalty case. It's nobody in this room's first death penalty
20 case, so we've had some time to think about this.

21 MARY JANE O'HARA: Right.

22 ATTY. JUHASZ: You have not.

23 MARY JANE O'HARA: Right.

1 ATTY. JUHASZ: So that's fine.

2 MARY JANE O'HARA: I'm just trying to be
3 honest.

4 ATTY. JUHASZ: I appreciate that. I did
5 see that you mentioned that you had, I thought you said
6 something about "I've never had a deep, soul-searching debate
7 but I have discussed my position for capital punishment for
8 extremely serious crimes." I'm interested if you can tell me
9 a little bit more about that. Was it a discussion, a series
10 of discussions, different discussions over the years?

11 MARY JANE O'HARA: Well, working as a
12 reference librarian, of course, many assignments are capital
13 punishment and all the other issues, and I've researched them
14 for people. But I guess what I meant by that is I never
15 actually knew someone close enough that I would be -- say a
16 family member and I, and another family member was killed, I
17 think that's what I meant. It would be a soul searching
18 where you are going to the depth of the discussion.

19 ATTY. JUHASZ: Okay.

20 MARY JANE O'HARA: What I meant is you
21 see something on TV and you lightly say, but you aren't
22 taking it to that degree.

23 ATTY. JUHASZ: Yeah, I understand, because

1 you're not that closely involved in it.

2 MARY JANE O'HARA: Exactly.

3 ATTY. JUHASZ: And I suspect you've
4 probably had more thoughts about it now because, even though
5 it's not a family member or something like that, the
6 potential of you being a juror on a case like that.

7 MARY JANE O'HARA: Oh, exactly.

8 ATTY. JUHASZ: Have you had discussions in
9 the past about the death penalty where you've taken a certain
10 position or used certain arguments to justify whatever
11 position you took?

12 MARY JANE O'HARA: Probably if you're just
13 talking about a case or a situation that you'd heard of and
14 you might say -- well, or like in a serial killing case and
15 you would say there are all these people suffering and, you
16 know, then you would say well, yes, I would consider it.

17 ATTY. JUHASZ: Okay. You mentioned a few
18 minutes ago when we were talking about cruel crimes that if
19 something is planned out. You talked about Mr. Bailey and
20 the pen. Are those offenses for you that if you find beyond
21 a reasonable doubt that the person did that, and let's just,
22 let's just take plans so we're talking about one sort of
23 offense, so you find beyond a reasonable doubt that somebody

1 planned something out and they did it and they carried
2 through the plan and they killed somebody, now tell me what
3 your thoughts are about the death penalty for that person.
4 Is that a person who because of that cruelty the death
5 penalty sort of has a leg up in your mind and they would have
6 to talk you out of it, or is it just the type of -- well, I'm
7 trying to -- I'm more interested in hearing what you have to
8 say than what I have to say.

9 MARY JANE O'HARA: Okay. The paper we had
10 to read today was really helpful because according to, from
11 my understanding, Ohio law tells you that you have to
12 consider the mitigating and -- I'm sorry, what's the other
13 one?

14 ATTY. JUHASZ: You're right, the
15 mitigating circumstances against the aggravating factors,
16 that's right.

17 MARY JANE O'HARA: Right, exactly. What's
18 wrong? What's wrong, guys? Okay. Never mind.

19 ATTY. JUHASZ: Oh, I said -- I'm sorry.

20 ATTY. INGRAM: Mr. Juhasz reversed them.

21 ATTY. JUHASZ: I reversed them I guess.

22 I'm sorry.

23 MARY JANE O'HARA: Oh.

1 ATTY. JUHASZ: It's aggravating
2 circumstances and mitigating factors.

3 MARY JANE O'HARA: There you go. Okay.
4 Okay. I thought I did something wrong.

5 ATTY. JUHASZ: No, I did, and nobody threw
6 anything at me. Yeah, it's called the aggravating
7 circumstances, which are the reasons to consider imposing the
8 death penalty.

9 MARY JANE O'HARA: Exactly.

10 ATTY. JUHASZ: Against the mitigating
11 factors, which are the reasons not to.

12 MARY JANE O'HARA: Right. So it just
13 wouldn't be automatic because after I read that and
14 understand what the law is, that you have to weigh those
15 things out.

16 ATTY. JUHASZ: Okay. So even if it's one
17 of these things that's a cruel thing for which you feel the
18 death penalty is appropriate, you can go into the second
19 phase with all four of though equal in your mind?

20 MARY JANE O'HARA: (Nods head
21 affirmatively.)

22 ATTY. JUHASZ: Okay. You mentioned also
23 when Mr. Bailey was asking you questions "truth in

1 sentencing," and I got some of what you were saying but I
2 think he may have gone on with other questions and I'm sort
3 of interested in hearing some more what you have to say about
4 that. Can you tell me what you mean by truth in sentencing
5 as it relates to the death penalty, first of all?

6 MARY JANE O'HARA: Okay. I might have a
7 misconception and the laws may have changed, but at one
8 point, and I guess until I was enlightened today that some of
9 the laws have changed, I felt that if you were given life in
10 prison automatically this could be plea bargained down or
11 something could happen to make it less. If a family member
12 of mine was killed, what I was saying is I would have a hard
13 time with the death penalty but I would have an easier time
14 if I knew that life in prison did mean life in prison. Am I
15 making myself clear?

16 ATTY. JUHASZ: I think so, and I'm going
17 to try to do it again, and if I get it wrong don't let me put
18 words in your mouth.

19 MARY JANE O'HARA: Okay.

20 ATTY. JUHASZ: Your concern was that life
21 imprisonment didn't really mean life imprisonment?

22 MARY JANE O'HARA: Exactly.

23 ATTY. JUHASZ: Just like when you used to

1 hear, as Mr. Bailey mentioned about good time, when somebody
2 got 10 years in jail they didn't really get 10 years in jail.
3 And so if I'm reading you right, you would have been more
4 inclined to give the death penalty because it was something
5 very serious and a life sentence that wasn't truly a life
6 sentence would somehow demean the seriousness of that crime.
7 Am I saying that right?

8 MARY JANE O'HARA: Yes. Okay, say Joe
9 Smith killed five people.

10 ATTY. JUHASZ: Uh-huh.

11 MARY JANE O'HARA: And maybe I knew some
12 of those people. If I felt that he had any chance of getting
13 out because life in prison did not mean life in prison; is
14 that clear?

15 ATTY. JUHASZ: Yes, yes. All right. So
16 at least when you thought that's the way the law worked, the
17 death penalty might have had more of a leg up because you
18 wanted to make sure that person was truly going to be
19 punished for those horrendous crimes?

20 MARY JANE O'HARA: That's exactly what I
21 was trying to say and kind of went around the barn with it.

22 ATTY. JUHASZ: That's okay. Now, let's go
23 to -- you think you have clear in your mind what those four

1 sentences are under Ohio law?

2 MARY JANE O'HARA: Yes.

3 ATTY. JUHASZ: Okay. Let me first tell
4 you that life imprisonment without parole, what lawyers call
5 L-WOP for short, really does mean that. There are no trick,
6 you know, things; well, yeah, it means life without parole
7 unless the guy, you know, engages in prison industries for 30
8 years and then they'll let him out.

9 MARY JANE O'HARA: Right.

10 ATTY. JUHASZ: Life imprisonment without
11 parole means just that, okay?

12 MARY JANE O'HARA: Okay.

13 ATTY. JUHASZ: Okay. So if that
14 becomes --

15 MARY JANE O'HARA: That was a
16 misconception on my part.

17 ATTY. JUHASZ: Okay. If that becomes a
18 vote of a jury, a verdict of a jury in a case, in a capital
19 case, that person goes to jail for the rest of their life and
20 they don't come out until they come out in a box, okay?

21 MARY JANE O'HARA: (Nods head
22 affirmatively.)

23 ATTY. JUHASZ: Now, there are two other

1 ones though and I want to talk about those for a second. One
2 is life imprisonment, and again life imprisonment means life
3 imprisonment, but with a qualifier; you have an opportunity
4 for parole after you serve 30 full years, and full years
5 means full years, okay?

6 MARY JANE O'HARA: Okay.

7 ATTY. JUHASZ: Not -- no good time, none
8 of that stuff.

9 MARY JANE O'HARA: Okay.

10 ATTY. JUHASZ: I always like to talk about
11 the movie *Shawshank Redemption*. Have you ever seen that
12 movie?

13 MARY JANE O'HARA: Yes, yes.

14 ATTY. JUHASZ: I can never remember the
15 character's name, but the guy that Morgan Freeman plays in
16 that movie, in the course of the movie he goes in front of a
17 parole board a couple of times and, you know, at the end they
18 show it, "rejected". He went in front of the parole board
19 and they rejected him. Now, I bring that up because if a
20 jury in a case like this says we're giving you life
21 imprisonment with no chance for parole for 30 years, what
22 that means is after 30 full years in prison they go in front
23 of the parole board, it does not mean they will get out.

1 They could get the rejected stamp like Morgan Freeman's
2 character, okay?

3 MARY JANE O'HARA: I understand.

4 ATTY. JUHASZ: And it also works the same
5 way with the other sentence except the hearing is in 25 years
6 instead of 30. So it's entirely possible that somebody who
7 gets one of those, let's call them lesser of the four
8 sentences, --

9 MARY JANE O'HARA: Could still serve.

10 ATTY. JUHASZ: -- could still serve their
11 entire life in prison.

12 MARY JANE O'HARA: I understand.

13 ATTY. JUHASZ: Now, because of how you
14 feel, would you hesitate to consider those options just
15 because the person may get out, not "will" but "may"?

16 MARY JANE O'HARA: It would depend on the
17 circumstances, in weighing the circumstances that we are to
18 weigh and the instructions according to the law.

19 ATTY. JUHASZ: No. Understand, I'm not
20 asking you how you would vote in a particular case.

21 MARY JANE O'HARA: Okay.

22 ATTY. JUHASZ: All I'm asking --

23 MARY JANE O'HARA: Would I consider them?

1 ATTY. JUHASZ: Yes.

2 MARY JANE O'HARA: Yes.

3 ATTY. JUHASZ: Because you understand that
4 all four have to be equal in your mind going in.

5 MARY JANE O'HARA: I understand.

6 ATTY. JUHASZ: And what I want to make
7 certain is that if you got to a second phase in a case like
8 this that you wouldn't say, "Well, you know, what? I'll
9 consider the death penalty, not lightly, but I'll consider
10 the death penalty. I'll consider life without parole because
11 Juhasz assured me life without parole is life without parole.
12 But, you know, these other two, they might have a chance of
13 getting out and that's just not acceptable to me so I'm not
14 even going to consider them." I'm not talking about how you
15 would ultimately vote, but would you consider them is what I
16 need to know?

17 MARY JANE O'HARA: Yes. This is so
18 hypothetical.

19 ATTY. JUHASZ: Yeah, I know.

20 MARY JANE O'HARA: It makes it difficult
21 for me.

22 ATTY. JUHASZ: I know. But you would at
23 least consider them?

1 MARY JANE O'HARA: Yes, yes.

2 ATTY. JUHASZ: I want to talk a little bit
3 about some other things that come up in criminal law cases,
4 and before we do that, I noticed on your questionnaire, and
5 we asked everybody, "In your opinion, what are the problems
6 with the criminal justice system," and you said, "Court case
7 backlog." And I assume you mean -- well, tell me what you
8 mean.

9 MARY JANE O'HARA: That the courts are
10 bogged down with cases and I think it makes it difficult for
11 everybody. And then, of course, with short staff, you know.
12 The ideal system -- well, that even goes to all levels that
13 have to do, you know, going out from the court to the social
14 services to the law enforcement. I just meant the whole
15 system.

16 ATTY. JUHASZ: Okay.

17 MARY JANE O'HARA: That if there was more
18 money, more staff and you would have it less bogged down.

19 ATTY. JUHASZ: All right. And I assume
20 your budget cut answer sort of dovetails into that?

21 MARY JANE O'HARA: Oh, exactly.

22 ATTY. JUHASZ: And how about the media?

23 MARY JANE O'HARA: Well, I think we

1 covered the media pretty much.

2 ATTY. JUHASZ: Okay. All right. Fair
3 enough. Have you heard the phrase before "taking the fifth"?

4 MARY JANE O'HARA: Yes.

5 ATTY. JUHASZ: All right. And I think
6 sometimes it gets a little bit of a bad rap in the TV and the
7 movies because it's usually some guy whose done lots of bad
8 things and we know that because we've seen the TV show, and
9 he sits in some interview room calmly smoking cigarettes,
10 staring in the corner saying "I'm taking the fifth," and "You
11 know you're hiding something, you guilty SOB." But actually
12 we need to talk about some other aspects of that fifth
13 amendment.

14 We started out this country after the revolution and
15 after a brief failed attempt with something called the
16 Articles of Confederation with the constitution that we've
17 had for a couple of hundred years now, and attached to that
18 constitution is a Bill of Rights. The fifth amendment in
19 those Bill of Rights says that you as a citizen accused of a
20 crime do not have to do anything to help the government
21 convict you, okay? In countries where the government is more
22 authoritative, has more power or people have fewer liberties,
23 it's a different system. The system is if the government

1 accuses you of something, you're presumed to be guilty and
2 you have to prove yourself to be innocent. We have just the
3 opposite. Do appreciate that?

4 MARY JANE O'HARA: Absolutely.

5 ATTY. JUHASZ: What do you think about
6 that, is that a good idea? Do we have the right idea or do
7 they have the right idea?

8 MARY JANE O'HARA: I think that our
9 country is doing the absolute best they can in considering
10 rights, human rights.

11 ATTY. JUHASZ: Okay.

12 MARY JANE O'HARA: I think in taking the
13 fifth -- you know, maybe I should let you ask certain
14 questions.

15 ATTY. JUHASZ: No. Go ahead.

16 MARY JANE O'HARA: But in taking the fifth
17 not everybody comes off the way they'd like to or the way you
18 want people to perceive you. Sometimes I get too hyper and I
19 think oh, how am I appearing? Well, this can be true of
20 everybody. And if somebody chooses not to testify it may not
21 be for any other reason that they don't know how they're
22 going to be perceived.

23 ATTY. JUHASZ: You strike me, as most

1 jurors do who come up here, as somebody that if you get
2 selected for this job, you want to do the best you can and,
3 doggone it, you want to be fair.

4 MARY JANE O'HARA: That's right.

5 ATTY. JUHASZ: And you've got three
6 children and four grandchildren and somewhere along the line
7 I imagine you've had to mediate a dispute or two along the
8 years, during the years, correct?

9 MARY JANE O'HARA: I think so.

10 ATTY. JUHASZ: Most times -- pardon me?

11 MARY JANE O'HARA: I think so.

12 ATTY. JUHASZ: Most of the time when you
13 do that, when any of us do that --

14 MARY JANE O'HARA: Yes.

15 ATTY. JUHASZ: Excuse me. When any of us
16 do that it's sort of a natural inclination that before we
17 make a decision, before you decide whether somebody, whether
18 one of your children did something wrong --

19 MARY JANE O'HARA: Thank you.

20 ATTY. JUHASZ: Sure -- you'll want to hear
21 both sides of the story. That's kind of how we've learned to
22 do things fairly. Now, there's a little bit of a tension
23 here, though, and it's because of the fifth amendment. You

1 want to do things fairly in this case, but unlike that normal
2 situation where, you know, one son accuses the other one of
3 doing something wrong and you have to decide whether he did
4 it, in this case because of the fifth amendment it's a little
5 different situation and you may not hear both sides of the
6 story. Do you appreciate that?

7 MARY JANE O'HARA: (Nods head
8 affirmatively.)

9 ATTY. JUHASZ: I like to tell people when
10 we talk about that box that most people think that if the
11 verdict in a criminal case is guilty, the government wins,
12 and if the verdict in the criminal case is not guilty, the
13 defendant wins. That's not actually true. If the verdict in
14 a criminal case is guilty the government wins because it
15 carried its burden of proof. If the verdict is not guilty
16 the government lost its case because it brought the
17 allegations, it sort of represented we have enough proof to
18 convince you folks beyond a reasonable doubt, but they didn't
19 and so they didn't fill up the box. Do you see that?

20 MARY JANE O'HARA: Yes.

21 ATTY. JUHASZ: I like to use that box for
22 that reason because the box has to be filled up by the
23 government. The defendant doesn't put anything into the box

1 and she doesn't take anything out of the box. Do you see
2 that?

3 MARY JANE O'HARA: I understand. And
4 Attorney Bailey mentioned about the venue and different
5 things like that, that it is the government's duty to prove
6 the situation.

7 ATTY. JUHASZ: Right. Some jurors have a
8 problem. We had one juror I can recall since we've been
9 working on this case who when Mr. Bailey stood up and said
10 that and they said, "So you mean if you forget to prove that
11 it happened in Trumbull County that we would have to say not
12 guilty," and your oath as a juror would require you to do
13 that. Some people would regard that as a technicality, but
14 do you have a problem with that or do you not?

15 MARY JANE O'HARA: It's hard to hear just
16 like when you read about cases that if rights or searches or
17 whatever aren't done correctly, but that's our laws, and I
18 think the laws are trying to be as fair as they can.

19 ATTY. JUHASZ: Okay. So you have no
20 problem yourself? You understand that the way our system --

21 MARY JANE O'HARA: I might be frustrated
22 but I would follow the directives.

23 ATTY. JUHASZ: Okay. Because of that

1 fifth amendment it's basically when the government says you
2 do something they've got to prove that you did it, if they
3 can prove it. And if they can, the verdict is guilty. If
4 they can't prove it, it's not guilty. You see that? No
5 problem holding them to that burden of proof?

6 MARY JANE O'HARA: No problem.

7 ATTY. JUHASZ: All right. And let's just
8 say, let's just take that little venue example for a second.
9 Mr. Bailey was very complimentary to Mr. Ingram and I. I'll
10 return the compliment. He and Mr. Becker are very good
11 prosecutors, but let's just hypothetically say that for
12 whatever reason they forget to prove in this case or some
13 other case that the crime happened in Trumbull County, what
14 lawyers call venue. Now, you understand from what we've just
15 talked about that the jurors sitting on that case would under
16 their oaths have to say, "Sorry, not guilty. You didn't
17 prove all the elements. Even though we think the person you
18 charged is guilty as hell, you didn't prove everything." Any
19 problem if something like that should happen in this case
20 returning a not guilty verdict?

21 MARY JANE O'HARA: Play by the rules.

22 ATTY. JUHASZ: All right. And that's
23 exactly the answer, that is the only way. And Judge Stuard

1 says this a lot, the only way that we can assure that these
2 trials are fair is that everybody plays by the same set of
3 rules.

4 You've mentioned a couple times that you're going to
5 take some comfort in the fact that Judge Stuard is going to
6 give you the instructions that you need.

7 MARY JANE O'HARA: Yes.

8 ATTY. JUHASZ: And indeed he will. I may
9 make you slightly uncomfortable when I tell you that although
10 he'll give you definitions of things, he will not quantify
11 things for you. I know because my wife is a medical
12 technologist so she's a scientist, you know, she doesn't
13 understand how people like me talk about reasonable doubt and
14 what a reasonable person would do. It's like, you know, give
15 me black and white. You will not have that. You won't get
16 an instruction that says if "X" number of evidence is
17 produced the verdict is guilty beyond a reasonable doubt;
18 otherwise, not. If "X" number of witnesses are produced the
19 guilty is verdict -- or the verdict is guilty beyond a
20 reasonable doubt; otherwise, not. He will give you a
21 definition of reasonable doubt but he won't quantify it. Am
22 I making that clear?

23 MARY JANE O'HARA: I think so. I think

1 that you're saying that I can't rely on him to help me in my
2 job except by giving instructions, and it would be just like
3 me standing there telling you to take the X-rays. I'm not
4 going to take them for you but I can tell you how to do it.

5 ATTY. JUHASZ: Right, exactly.

6 MARY JANE O'HARA: Is that --

7 ATTY. JUHASZ: Exactly.

8 MARY JANE O'HARA: Okay.

9 ATTY. JUHASZ: Now, you have to decide
10 whether that silly little box is filled up beyond the line
11 called reasonable doubt and that means that, as Mr. Bailey
12 said, the case doesn't have to be proved beyond a shadow of a
13 doubt or beyond imaginary or foolish doubt, but it's got to
14 be proved beyond any doubt that's based on reason and common
15 sense. That means if you have one doubt left at the end of
16 considering the government's evidence and that doubt is based
17 on reason and common sense, then they have not met their
18 burden of proof.

19 MARY JANE O'HARA: I understand.

20 ATTY. JUHASZ: Any problem with that?

21 MARY JANE O'HARA: No.

22 ATTY. JUHASZ: A lot of people when they
23 make decisions, they sort of put the pros and the cons on two

1 sides of the checklist, whether they do it on paper or in
2 their mind's eye. You know what I'm talking about?

3 MARY JANE O'HARA: (Nods head
4 affirmatively.)

5 ATTY. JUHASZ: You have to do the same
6 thing in a case like this. On the one side would be the
7 reasons why the government says you should convict. On the
8 other side would be the reasons, doubts that you may have
9 that you've thought about yourself, that the lawyers have
10 brought to your attention or that other jurors have brought
11 to your attention. If when you're done talking with the
12 other jurors, if you have at least one doubt based on reason
13 and common sense, there's no other way to account for it,
14 then they haven't proved their case. You see that?

15 MARY JANE O'HARA: (Nods head
16 affirmatively.)

17 ATTY. JUHASZ: No problem holding them to
18 that type of burden of proof?

19 MARY JANE O'HARA: No.

20 ATTY. JUHASZ: Okay. They may ask you to
21 consider and I think Mr. Bailey mentioned circumstantial
22 evidence. Let me tell you a quick story that I like to tell
23 about that and then I'm going to sit down and not otherwise

1 sully this beautiful afternoon for you . Let's pretend that
2 it's a little later in the year, say July or August. It's
3 maybe 5:00 or 6:00 o'clock at night. It's a bright sunny
4 day, 80 degrees, humid, but the clouds are getting dark in
5 the west and a breeze is starting to kick up and you know
6 pretty soon we're going to get one of those late afternoon,
7 early evening thunderstorms that we get.

8 I'm out in the kitchen making you a glass of iced
9 tea or lemonade and all of a sudden there's a big crash in
10 the living room. As I go running in to investigate my son
11 Mike's cat is running out between my legs. I look to my
12 left, there's my son Mike with his hands over his face in
13 obvious distress. I look to my right and one of my wife Mary
14 Pat's Norman Rockwell plates is off of the mantel shattered
15 in a million pieces on the hearth, and two or three feet away
16 is one of Mike's Nerf balls. Now, based on that type of
17 circumstantial evidence, and it's circumstantial because I
18 did not see how the plate got broken, you agree?

19 MARY JANE O'HARA: (Nods head
20 affirmatively.)

21 ATTY. JUHASZ: I suppose that I could say
22 that my son Mike was throwing the Nerf ball like he's been
23 told 600,000 times not to do in the house, broke the plate,

1 scared the cat. But it also could be that the cat was
2 prancing along along the mantel like she's been told not to
3 and knocked the plate off and Mike says, "I'm going to get
4 blamed for it and I never picked up my Nerf balls and there's
5 one and it's pretty bad evidence for me." Or it could be
6 that the breeze from the approaching thunderstorm got the
7 best of the plate, the noise scared the cat, and Mike thinks
8 he's going to get blamed for it anyway.

9 Here's my point with all that; when the government
10 asks you to make inferences from circumstantial evidence they
11 have to be reasonable inferences, number one, you see that?
12 And No. 2, if there's some other reasonable inference based
13 on the same evidence, then you would have a reasonable doubt
14 about the inference the government asked you to make. Would
15 you agree?

16 MARY JANE O'HARA: (Nods head
17 affirmatively.)

18 ATTY. JUHASZ: If I would -- it would be
19 unfair of me to convict my son Mike beyond a reasonable doubt
20 from that circumstantial evidence I gave you, right?

21 MARY JANE O'HARA: (Nods head
22 affirmatively.)

23 ATTY. JUHASZ: Any problem holding the

1 government to that kind of burden of proof in this case?

2 MARY JANE O'HARA: No. I have a wonderful
3 example with the blasting. They blast at noon or 1:00 and
4 all the working people had no idea that the blasting was
5 going on, so you have a cat in the house and things fall off
6 the wall or off the shelf, so I hear you.

7 ATTY. JUHASZ: Okay.

8 MARY JANE O'HARA: And I have no problem.

9 ATTY. JUHASZ: All right. Any reason why
10 you think you could not serve as a juror on this case?

11 MARY JANE O'HARA: No.

12 ATTY. JUHASZ: All right. I appreciate
13 your time and your answers. Thank you.

14 MARY JANE O'HARA: Thank you.

15 THE COURT: Does either side wish side
16 bar?

17 ATTY. BAILEY: No, Your Honor. Pass.

18 THE COURT: Pass?

19 ATTY. JUHASZ: Pass.

20 THE COURT: Ma'am, I would ask you -- you
21 will be in the pool from which the alternates are selected
22 here.

23 MARY JANE O'HARA: Okay.

1 THE COURT: I would ask you to be here
2 Monday at 11:00 o'clock.

3 MARY JANE O'HARA: Monday at 11:00.

4 THE COURT: I again remind you not to
5 discuss anything about the case, watch anything on TV, read
6 anything in the newspaper until you return, okay? Thank you
7 so much.

8 MARY JANE O'HARA: Thank you.

9 THE COURT: You're excused. Have a good
10 afternoon, what's left of it here, okay?

11 MARY JANE O'HARA: Thank you. You too.

12 (Whereupon, Mary Jane O'hara was added to
13 the pool of prospective alternate jurors and excused for the
14 day.)

15 THE COURT: I have a note here, folks.
16 There are four people waiting, one more coming in, and Connie
17 has to know what we're going to do for Monday, what kind of
18 message to be put on. We've told the three or four that we
19 had to be here Monday and told each one of these to be here
20 Monday, so I don't -- I'm assuming we don't have to, unless
21 you want to put it on as a backup, tell the ones to come in
22 at 11:00 o'clock Monday. I guess it won't hurt to put it on
23 if they call. The other ones were notified to be here at

1 1:00 o'clock on Monday. What else do we need by way of a
2 message?

3 ATTY. INGRAM: I don't know. I'm
4 confused. I don't think anything.

5 ATTY. JUHASZ: The alternates are being
6 told to report at 11:00 and the regular jurors at 1:00.

7 THE COURT: Right. So we should have all
8 the bases covered on that.

9 ATTY. INGRAM: Right.

10 ATTY. JUHASZ: I think so.

11 THE COURT: So we don't need a message
12 then for this jury on Monday. Now, what about the four or
13 five we have downstairs?

14 ATTY. INGRAM: I would suggest that you
15 ask 329, Mr. Morgan, to come up and 334, Mr. --

16 COURT REPORTER: Brdek.

17 ATTY. INGRAM: Brdek.

18 ATTY. BAILEY: What about Kahler? We have
19 two sitting out in the hall.

20 ATTY. INGRAM: Well, Ken, if you would let
21 me conclude my thought you would get an answer. And while
22 I'm on Mr. Bailey, if he spends an hour with one more
23 alternate juror I'm going to have to slit my throat.

1 Both 329 and 334, Mr. Morgan has a receipt for his
2 vacation. He's clearly gone. Mr. Brdek indicates, and I've
3 done this so I know what it would be like, he coaches two
4 baseball teams and one soccer team. We're in the height of
5 his season and it might be a problem.

6 THE COURT: That leaves what, three more
7 down there then?

8 CAPTAIN BACON: Two more. Oh, yeah,
9 three.

10 THE COURT: Well, let's bring those two
11 up, and if you don't mind taking them out of order and get --
12 see if they're going to be excused or not.

13 I never heard this, L-WOP.

14 ATTY. BAILEY: I never heard it either.

15 ATTY. JUHASZ: You never heard L-WOP?

16 ATTY. BECKER: You never heard of that?

17 ATTY. INGRAM: Unlike Mr. Bailey, however,
18 when you heard it in the context -- off the record.

19 (Whereupon, a discussion was had off the
20 record.)

21 PROSPECTIVE JUROR ROBERT D. MORGAN

22 THE COURT: Good afternoon.

23 ROBERT D. MORGAN: Good afternoon, sir.

1 How are you today?

2 THE COURT: Oh, I'm doing fine, thank you.

3 ATTY. INGRAM: Here you go, Your Honor.

4 ATTY. JUHASZ: You need a copy, judge?

5 THE COURT: I got it right here. I'm
6 having more trouble keeping track of these things.

7 Mr. Morgan, did you have something that came up after you
8 filled this out that was going to cause you a problem?

9 ROBERT D. MORGAN: No, this had been --

10 THE COURT: I'm sorry?

11 ROBERT D. MORGAN: This had been in the
12 plans for quite some time.

13 THE COURT: Okay. You have plans to go,
14 when is that?

15 ROBERT D. MORGAN: Leaving here May 22nd.

16 THE COURT: May 22nd.

17 ROBERT D. MORGAN: May 22nd.

18 THE COURT: Okay. You would rather go to
19 that than sit on this trial?

20 ROBERT D. MORGAN: I think so.

21 THE COURT: Okay.

22 ATTY. INGRAM: No objection.

23 ATTY. BAILEY: No objection, Your Honor.

1 ATTY. BECKER: No objection from the
2 State, particularly since he has fantastic airfare. Two
3 hundred and some bucks to Seattle, that's pretty good
4 airfare.

5 THE COURT: Okay. Listen, we appreciate
6 your time and your participation in this whole process. It's
7 -- I know many of your number feel that we've taken some of
8 your time unduly and that, let me assure you, is not the
9 case. We've tried to keep this moving along as expeditiously
10 as possible. We do thank you for your time. You're excused.
11 Good luck to you.

12 ROBERT D. MORGAN: Thank you, sir.

13 THE COURT: The record will show pass for
14 cause.

15 ATTY. BAILEY: You have a good trip.

16 ROBERT D. MORGAN: Thank you.

17 ATTY. JUHASZ: Have a good trip. Excused
18 for cause you mean, judge? Excused for cause?

19 THE COURT: I'm sorry?

20 ATTY. JUHASZ: It's excused for cause?

21 THE COURT: Excused for cause, yeah. I
22 see you folks are filling in for my bailiff. That's fine.

23 (Whereupon, Robert D. Morgan was dismissed

1 from the pool of prospective alternate jurors for cause.)

2 PROSPECTIVE JUROR JOHN M. BRDEK, JR.

3 THE COURT: Good afternoon.

4 JOHN M. BRDEK, JR.: Hello.

5 THE COURT: Are you tired of waiting
6 around for us yet?

7 JOHN M. BRDEK, JR.: No. It wasn't too
8 bad.

9 THE COURT: Well, okay. We thank you for
10 that. We've tried to keep it moving, believe me. You had
11 something that's come up?

12 ATTY. INGRAM: Here you go.

13 THE COURT: Oh, yes. You're the busy
14 fellow. One of these gentleman says that he appreciates what
15 you're doing because he's done the same thing. This is your
16 busy season?

17 JOHN M. BRDEK, JR.: It happens to be,
18 yes. Primarily I help. I'm not managing baseball right now,
19 I'm helping the coach, but I do manage a soccer team, too.

20 THE COURT: Oh, okay.

21 JOHN M. BRDEK, JR.: And it's fun with the
22 kids.

23 THE COURT: Yeah.

1 JOHN M. BRDEK, JR.: That's where my spare
2 evening time goes.

3 THE COURT: Rather intense during this
4 period of the year. That undoubtedly would interfere in a
5 lot of different considerations, a lot of plans that you've
6 already made to do that, and if you were required to be here
7 that would be disconcerting, would it not?

8 JOHN M. BRDEK, JR.: Possibly. Generally
9 our games aren't until 6:00 in the evening, which, you know,
10 I would usually need about a half an hour or 45 minutes to be
11 available for that. Practice sessions will be over in about
12 the next week or two and then our games will begin.

13 THE COURT: You've got the situation of
14 possible sequestration where you're kept together. We don't
15 know how long that would be. Well, you know, it's up to you.
16 Both sides here have drawn this to my attention and it's
17 really your call. We would not wish to have you seated here
18 and then have something else on your mind. We usually get
19 out of here by 4:30, but there are times, depending if we
20 have a witness from out of town or something, we might go
21 later than that. And I can see where that would put an undue
22 pressure on you if you had to be out of here and make your
23 arrangements to be home by that time, but you tell us. If

1 you wish to serve, that's fine. If you wish not to, say
2 that.

3 JOHN M. BRDEK, JR.: I was hoping that you
4 people would make that call for me. I understand that it's
5 my obligation and duty to do this. However, I am flexible as
6 far as time restraints. I tend to juggle work and children
7 and grandchildren accordingly. I really can't answer that
8 question because I do stay quite busy and I do try to keep a
9 schedule going.

10 THE COURT: But let me ask you this, if --
11 what part of the season are you in right now, you just
12 started?

13 JOHN M. BRDEK, JR.: Just beginning, yes.
14 Basically games and both baseball and soccer would be over
15 about the second week of July, so it's about a six to an
16 eight week season.

17 THE COURT: Yeah. Well, let me ask you
18 this, assume that you agree to stay or you're selected to
19 stay and you find that due to the time elements involved here
20 that maybe you miss a game or two. Is that going to be
21 something that's going to be that much concern to you or is
22 there somebody else that can cover?

23 JOHN M. BRDEK, JR.: Somebody else can

1 cover. I do have an assistant coach for soccer. And, like I
2 say, I'm not managing baseball this season, I'm assisting the
3 coach. As far as time restraints, missing my daughter versus
4 my son, that's already inevitable because there are times
5 when they both have a game. My wife and I have to split up
6 in different directions.

7 THE COURT: Try and make them all but you
8 can't.

9 JOHN M. BRDEK, JR.: Oh, sure. There was
10 a time when that bothered me. When I elected to work
11 overtime and my son scored his first soccer goal, I was
12 devastated and that bothered me, but I'm past that now. That
13 was six years ago.

14 ATTY. INGRAM: That would still bother me.

15 JOHN M. BRDEK, JR.: Well, it does.

16 ATTY. INGRAM: You missed the first one.

17 JOHN M. BRDEK, JR.: But since then they
18 play year-round, they play indoor, they have scored goals. I
19 love to watch them, but there's also times I don't like to
20 watch them.

21 THE COURT: It's the dad that never shows
22 up, it's the dad that never shows up that sticks out.
23 Approach for a moment.

1 (Whereupon, a bench conference was held.)

2 ATTY. INGRAM: My kids, by the way, are
3 both done with soccer. My youngest, it was his senior season
4 so I no longer have to go to all of those games, although I
5 am going to miss it. Here's all we need to know, if we
6 sequester you and take you away from the sporting
7 responsibilities for two separate periods of time, maybe up
8 to five days each, I can't tell you that, but let's just
9 assume five days each, is that something that would pose such
10 a problem for you that you feel it would be a hardship and we
11 should let you go? We're going -- we're letting you make
12 this decision.

13 JOHN M. BRDEK, JR.: I'm going to have to
14 think for a second here.

15 ATTY. INGRAM: Take your time.

16 JOHN M. BRDEK, JR.: Would I still be
17 allowed to see my children once a day?

18 ATTY. INGRAM: Not during sequestration,
19 no.

20 JOHN M. BRDEK, JR.: Not at all. That's
21 something I've never done, not seeing them, not even walking
22 into the bedroom if I work overtime.

23 ATTY. INGRAM: Well, you don't get to go

1 home.

2 JOHN M. BRDEK, JR.: Okay. Can you give
3 me a time line when this may be, if it were after sports or
4 during, because, like I say, most everything would be over in
5 about six to eight weeks?

6 ATTY. INGRAM: Yeah, both of these will be
7 right within that six to eight week period, if there are two.
8 The first time will probably be around the end of May, the
9 beginning of June, and if there is a second sequestration it
10 would probably be a week later.

11 JOHN M. BRDEK, JR.: I can't say that I
12 wouldn't do that, but would it bother me slightly? Probably.
13 Would I do it? Certainly. For instance, I don't care to go
14 to work at the mill every day, but I do it. It's what I have
15 to do.

16 ATTY. INGRAM: What I think, I don't know
17 that any of us are making ourselves clear. We're actually
18 offering you a pass. If you want the pass, say yes. If you
19 don't, say nay and we'll just carry on.

20 JOHN M. BRDEK, JR.: Okay. Again, it's a
21 decision I didn't think I would have to make. It's
22 interesting to serve but it's also kind of, if I could speak
23 freely, kind of a pain.

1 ATTY. INGRAM: Yeah.

2 JOHN M. BRDEK, JR.: Because --

3 ATTY. BECKER: You're the first person
4 that's ever said that.

5 JOHN M. BRDEK, JR.: Well, just being a
6 human being, I mean, you know, we're used to our own routine.
7 You know, sometimes a different routine is kind of
8 interesting and sometimes it can get old. Granted, you know,
9 I've worked 30 years at WCI, it's very old, you know, so
10 looking at this beautiful building and being around different
11 people is kind of interesting. Breaking my evening routines
12 with the children, that would perhaps bother me a little bit,
13 but, you know, life goes on. I tend to work overtime also
14 and I'm away from the kids and I do miss some practices and
15 games.

16 THE COURT: May I suggest this, if there's
17 no objection, to have this gentleman come back Monday if he
18 wishes to participate and give him the weekend to think about
19 it?

20 ATTY. BECKER: Excellent idea.

21 ATTY. JUHASZ: That's fine.

22 THE COURT: And if you don't wish to come
23 in we know that you decided against coming in.

1 JOHN M. BRDEK, JR.: Well, what shall I
2 do, come at a certain time or call to come in?

3 THE COURT: That would help if you call,
4 but if you're willing to participate then come in Monday at
5 9:00, okay?

6 JOHN M. BRDEK, JR.: Okay.

7 THE COURT: Because we have a few more
8 that we're going to question at that time. That will give
9 you time to discuss what you're doing with your kids, your
10 wife, and I know you have mixed feelings at this point in
11 time.

12 JOHN M. BRDEK, JR.: Certainly.

13 THE COURT: So be back here at 9:00
14 o'clock in the morning or call in and talk to Connie
15 downstairs and tell her that you've decided that you would
16 accept the ability to be removed for cause, okay?

17 JOHN M. BRDEK, JR.: Okay, judge. Thank
18 you.

19 THE COURT: Fair enough?

20 JOHN M. BRDEK, JR.: Yes. I'm just
21 shocked that our time would be at the same time when playoffs
22 would be and, you know, we don't know how long this trial is
23 going to take.

1 THE COURT: No, that's too much to ask to
2 have any idea there. And, you know, we can't, none of us can
3 do very much about the timing of this whole thing, or any
4 case really. Okay.

5 JOHN M. BRDEK, JR.: Okay. Am I done?

6 THE COURT: You're done.

7 JOHN M. BRDEK, JR.: Okay. Thank you.

8 THE COURT: Thank you very much. Thank
9 you, now.

10 (Whereupon, John M. Brdek, Jr. was
11 dismissed from the pool of prospective jurors and excused for
12 the day, after which a discussion was had off the record.)

13 PROSPECTIVE JUROR TROY KAHLER

14 THE COURT: Good afternoon. Have a seat
15 there.

16 TROY KAHLER: Good afternoon.

17 THE COURT: You're Troy?

18 TROY KAHLER: Yes.

19 THE COURT: You read that handout that was
20 given to you?

21 TROY KAHLER: Yes.

22 THE COURT: You have a pretty good idea of
23 why we're here. This case is State of Ohio versus Donna

1 Roberts. She's charged with two counts of aggravated murder
2 with specifications. Under the law of Ohio just because a
3 person is involved or commits a murder does not mean that
4 they automatically face the death penalty. The scheme
5 arrived at by the legislature in drafting the law says that
6 aggravated murders committed under certain circumstances, and
7 if those circumstances are attached to the indictment as
8 specifications, then that raises the possibility of the jury
9 having to consider the death penalty.

10 The burden is upon the State to prove each and every
11 element of the crimes of aggravated murder with the
12 specifications. We do that beyond a reasonable doubt, and if
13 the State is unable to do that, then this jury would properly
14 make a finding of not guilty of the charges. If the State,
15 however, is able to carry that burden of proof and this jury
16 would return a finding of guilty, then the matter would go to
17 a second hearing, and only then.

18 And one thing to keep in mind is that the State wins
19 or loses the case. The defendant need not participate or do
20 anything if they care not to.

21 We have no way of foreseeing what this jury will do.
22 There's been no evidence produced yet. It may not get to a
23 second phase, but if we do it's too late at that time to make

1 inquiry about each individual juror's thoughts or beliefs on
2 the death penalty, and we could run into a situation where
3 you have someone who firmly believes in an eye for an eye, if
4 you kill someone you should lose your life. That person
5 could not be fair to any defendant.

6 The defendant has the right to require at that
7 second phase that the prosecution prove beyond a reasonable
8 doubt that the aggravating circumstances outweigh the
9 mitigating factors. And the purpose for that second hearing
10 is for the State to produce evidence showing reasons why the
11 jury should consider and impose a death penalty due to the
12 aggravating circumstances. And the jury would be presented
13 with mitigating factors or could consider mitigating factors
14 that would speak in favor of why they should not impose the
15 death penalty, and again the State has to carry the burden of
16 proof of beyond a reasonable doubt.

17 Likewise, if we waited to that point and had a
18 person or persons who through religious or moral convictions
19 could never participate in making such a decision, then the
20 State would not be able to get a fair trial. The State under
21 the law is entitled, if they prove their case beyond a
22 reasonable doubt, to request of this jury, if we get to the
23 second phase, for the consideration, and if the facts warrant

1 it, to a recommendation of the death penalty, so the only
2 practical thing we can do is question everybody up front.

3 Now, it doesn't matter what your personal views are
4 on this. You're entitled to your opinion. Everyone here
5 will give due reference -- or deference to that. It is
6 important, however, that they have the assurance of each of
7 these people to be seated that they're able to follow the
8 law, and that means that whether they agree or disagree to
9 some degree with the law, they have to follow it. Everybody
10 has to be able to do that or somebody isn't going to receive
11 a fair trial.

12 The other thing that you will be asked about is
13 pretrial publicity, whether you've been exposed to such and
14 whether it is so fixed in your mind that you're not able to
15 set it aside. In order for this case again to be tried
16 fairly each one of these jurors will have to depend on
17 evidence that is presented in this courtroom, and that alone,
18 in making a determination here. Okay?

19 TROY KAHLER: Uh-huh.

20 THE COURT: Fair enough.

21 TROY KAHLER: Yes, sir.

22 ATTY. BECKER: Thank you, Your Honor.

23 ATTY. BECKER: I want to make sure, is it

1 Mr. Kahler?

2 TROY KAHLER: Yes, Kahler.

3 ATTY. BECKER: Okay. Mr. Kahler, my name
4 is Chris Becker. I'm with the Trumbull County prosecutor's
5 office. You've already met Mr. Bailey about a month ago --

6 TROY KAHLER: Yes.

7 ATTY. BECKER: -- down in the large
8 courtroom here. We're going to try and move as quickly as we
9 can and ask you these questions. I apologize for keeping you
10 here today, a nice Friday afternoon after the storms have
11 sort of cleared out. I want to stress, though, before we
12 begin that, just to reiterate what the Court said, there are
13 no right or wrong answers in this case.

14 TROY KAHLER: Uh-huh.

15 ATTY. BECKER: No one is here to try and
16 change your views or your opinions. We've had probably more
17 people excused from this case than we've kept as jurors
18 because of various reasons; they could not impose the death
19 penalty for whatever reasons, they would automatically impose
20 the death penalty for whatever reasons. We've had people
21 that have known some of the witnesses, some members of the
22 Howland Police Department, and we've had people who knew the
23 defendant or her family or the victim and their family, so

1 it's a variety of reasons why jurors sometimes can't serve.
2 Even in a larger county like Trumbull County, it's
3 interesting to see how many people are intertwined with each
4 other and know each other.

5 With that said, I'm going to touch upon the two
6 areas that the Court mentioned, the publicity as well as the
7 death penalty, and then we're going to talk generally about
8 criminal law concepts.

9 I notice in your questionnaire, and the only reason
10 I want to start out here is because it was a little confusing
11 to me. There was a question that said, "State whether you
12 believe that certain crimes should require a sentence of
13 death," and you said no. Do you recall that? You wrote yes
14 and then you scratched it out.

15 TROY KAHLER: Right.

16 ATTY. BECKER: Okay. Is that because you
17 do not believe in the death penalty?

18 TROY KAHLER: Certain -- okay, certain
19 crimes requiring the death penalty?

20 ATTY. BECKER: Yeah, and maybe I'll just
21 show it to you. It may be easier.

22 TROY KAHLER: I'm sorry. It's been a
23 while since I've did this.

1 ATTY. BECKER: There's no test on this.

2 TROY KAHLER: It's been a while since I
3 did this.

4 ATTY. BECKER: I understand.

5 TROY KAHLER: Oh, I had yes on there. I
6 didn't realize that there was require, "State whether you
7 believe that certain crimes should require a sentence of
8 death," all of them, and my answer was no.

9 ATTY. BECKER: All right. And is that
10 still your answer?

11 TROY KAHLER: Yes.

12 ATTY. BECKER: Okay. So you don't believe
13 that there should be any crimes that require a sentence of
14 death?

15 TROY KAHLER: I interpreted that to state
16 that all crimes of this nature should.

17 ATTY. BECKER: Okay. So it was a
18 misunderstanding?

19 TROY KAHLER: Yeah.

20 ATTY. BECKER: Okay. You then do believe
21 that some crimes should?

22 TROY KAHLER: Some crimes should. I'm
23 stating that not all should automatically.

1 ATTY. BECKER: Okay. And that's probably,
2 I mean, that's a very good interpretation of what our law is.
3 Of course not every crime requires the death penalty. Thefts
4 and robberies and burglaries don't.

5 TROY KAHLER: Right.

6 ATTY. BECKER: And we have had some people
7 come in here and say look, if you rape a child you should get
8 the death penalty. Well, that's not the law in Ohio. Well,
9 with that said then, I assume that you've had this opinion
10 for a while, that some crimes, not all crimes, but some
11 crimes should be punishable by the death penalty?

12 TROY KAHLER: I would say yes.

13 ATTY. BECKER: All right. And you
14 understand that if you were selected for this jury you may,
15 if we get to that point, be asked to impose a verdict
16 yourself with your fellow jurors calling for the death
17 penalty?

18 TROY KAHLER: (Nods head affirmatively.)

19 ATTY. BECKER: Do you believe that you
20 could do that if you were called upon?

21 TROY KAHLER: Oh, given the information
22 that Judge Stuard said, if need necessary, yes.

23 ATTY. BECKER: So if the State were to

1 prove its case and prove to you beyond a reasonable doubt
2 that the death penalty is warranted and the facts permitted
3 it, you could envision yourself going back into this jury
4 room in this courtroom and signing a piece of paper with 11
5 other jurors calling for the imposition of the death penalty?

6 TROY KAHLER: If so warranted.

7 ATTY. BECKER: And it may not be warranted
8 either.

9 TROY KAHLER: Correct.

10 ATTY. BECKER: We have to have jurors that
11 are going to fairly consider all four of the options that you
12 were given on that piece of paper down there. Do you believe
13 that you are the type of juror who could fairly consider all
14 four of those options?

15 TROY KAHLER: Definitely.

16 ATTY. BECKER: All right.

17 TROY KAHLER: I am really, because of the
18 business that I work in in the industry, I have very eclectic
19 interests and I review varied genres seriously and I feel
20 that I would have the ability to consider all the evidence
21 and, again, if necessary.

22 ATTY. BECKER: All right. And that would
23 be the kind of person we're looking for here actually. We're

1 looking for someone who is not going to come in -- let me
2 back up a little bit. This is going to be a case that
3 involves two trials really. It's really two trials and it's
4 the only case in the criminal jurisdiction that really
5 requires two trials. The first it going to be whether she's
6 guilty or innocent --

7 TROY KAHLER: Correct.

8 ATTY. BECKER: -- and whether or not
9 Mr. Bailey and I can prove that to you. We may not be able
10 to prove to you that she's guilty beyond a reasonable doubt.

11 TROY KAHLER: Uh-huh.

12 ATTY. BECKER: And in that case we
13 wouldn't even have to worry about this death penalty. As the
14 Court explained, we're doing this as a precautionary measure
15 and we're being presumptuous because if we get to that second
16 phase Mr. Bailey and I and the other attorneys in this case,
17 we can't come and say, "Okay, we found her guilty. Now,
18 jurors, we're going to ask you to see if you can impose the
19 death penalty," because obviously those people that could not
20 would raise their hands and say, "Hey, I'm out of here. I
21 can't do that," and that's not fair to the State. And it
22 also wouldn't be fair to the defendant if the people that
23 were so in favor of the death penalty said, "Oh, yeah, this

1 is what we've been waiting for." So, you see, we have to get
2 a fair and even keel of jurors.

3 TROY KAHLER: Uh-huh.

4 ATTY. BECKER: So if we get to the second
5 phase you're not of the mind set that any one of those four
6 penalties would have a head start on the other ones?

7 TROY KAHLER: No.

8 ATTY. BECKER: You would consider them
9 basically 25 percent? You would basically have, you know,
10 four options, 25 percent each you would give them
11 consideration?

12 TROY KAHLER: Correct.

13 ATTY. BECKER: All right.

14 TROY KAHLER: And, again, part of it is my
15 profession. I daily have to take data from sources all over
16 the world and sort of varied information and then make
17 decisions so.

18 ATTY. BECKER: Okay. So this is a little
19 bit, I suppose serving on jury service is a little bit
20 similar to what you do on a daily basis in your work.

21 TROY KAHLER: Uh-huh.

22 ATTY. BECKER: With that said, I want to
23 ask you a little bit about any publicity you may have heard

1 about this case. And, if I'm familiar, you don't know -- or
2 if I'm correct, you don't recall any of the testimony or --
3 I'm sorry, any of the coverage of this case?

4 TROY KAHLER: Gentlemen and ladies, I
5 travel frequently for Borders. We have 10 stores in
6 northeastern Ohio and I spend about a thousand miles a month
7 on the road.

8 ATTY. BECKER: Okay.

9 TROY KAHLER: I have to be honest and tell
10 you I have no idea what this case is about.

11 ATTY. BECKER: And that's --

12 TROY KAHLER: I didn't even know that
13 Howland was involved until you mentioned Howland, so I don't
14 know when it was, I don't know where it took place. I'm
15 realizing that it's Trumbull County because we're all here
16 today. And if I had a life because of my commitments for
17 employment, I would probably know something about this
18 otherwise.

19 ATTY. BECKER: Absolutely. And in all
20 honesty, sometimes that's a better type of juror to have, is
21 someone who doesn't know anything about this, because
22 obviously people that watch the news or television, and I'm
23 assuming you're familiar with Lacey Peterson in California or

1 something?

2 TROY KAHLER: (Shaking head negatively.)

3 ATTY. BECKER: Or O.J. Simpson?

4 TROY KAHLER: No, actually I met Johnny
5 Cochran this past fall.

6 ATTY. BECKER: Oh, okay.

7 TROY KAHLER: And one of the reasons why
8 I'm here, Johnny Cochran was very -- I spent an evening with
9 him -- was very adamant that if you were ever called for,
10 selected for jury duty service that it was imperative that
11 you, you know, participate to the fullest extent, so.

12 ATTY. BECKER: And that's good advice and
13 we appreciate that. We get a lot of people up here that just
14 want to shake their head and nod their head and say yeah, you
15 know, or I don't know. And this is really the only point in
16 this case where anybody is going to get to speak to you and
17 you're going to get to speak to us because if you're seated
18 on this jury, not that we want to be rude, but we can't speak
19 to you, we can't talk to.

20 TROY KAHLER: Oh, yeah, I'm aware of that.

21 ATTY. BECKER: Well, let me get into some
22 general criminal concepts then, and I'm sure you've run
23 across these phrases and these terms. First of all, I'm

1 assuming you've run across the presumption of innocence?

2 TROY KAHLER: Uh-huh.

3 ATTY. BECKER: And you're familiar with
4 that term that under the American judicial system and our
5 criminal justice system every defendant, not just this
6 defendant, has what's called the presumption of innocence and
7 that presumption stays with them unless and until the State,
8 which in this case is Mr. Bailey and I, can prove her guilty
9 beyond a reasonable doubt. You'll be willing to give
10 Mrs. Roberts her presumption of innocence throughout these
11 proceedings, correct?

12 TROY KAHLER: Correct.

13 ATTY. BECKER: Under that presumption of
14 innocence and because of that it is our burden and our burden
15 only to prove something to you in this case, you and your
16 fellow jurors. Miss Roberts does not have to present
17 anything to you. She doesn't have to present one witness.
18 She doesn't have to cross examine anyone. She doesn't have
19 to have her attorneys do anything. It's entirely incumbent
20 upon us in both of these parts of this trial, the guilty
21 phase as well as the second phase, to prove first that she's
22 guilty of the crimes charged, and second, that the death
23 penalty is warranted, if we get to that phase. You will not

1 make her prove anything to you, is that correct?

2 TROY KAHLER: I understand.

3 ATTY. BECKER: You just have to answer
4 verbally.

5 TROY KAHLER: I understand, sir.

6 ATTY. BECKER: Now, hand in hand with the
7 presumption of innocence is the concept of reasonable doubt,
8 and again I'm assuming you've heard of that concept?

9 TROY KAHLER: Yes.

10 ATTY. BECKER: And maybe read novels or
11 listened to radio programs or television shows, movies,
12 whatever. That concept was once explained to me by basically
13 taking a glass of water. There are basically three standards
14 of proof in American jurisprudence. There's the
15 preponderance of the evidence, which is the type of evidence
16 that's needed when you sue somebody. Someone rear ends you
17 while you're traveling taking care of those 10 stores,
18 Borders stores, and you're not at fault, the other guy is at
19 fault. You get one of these guys from TV that's going to,
20 you know, get you a million dollars and fight the insurance
21 companies and you come to court. That's the preponderance of
22 the evidence. Basically it's a glass of water that's half
23 full with one more drop of water poured into it. You win the

1 case if you can prove it by a preponderance of the evidence.
2 If you can fill that glass up to half way and put a drop of
3 water in, you win, you get your money, you get your new car,
4 your injuries for your back or your neck or whatever.

5 There's another concept called clear and convincing
6 evidence, and the professor I had basically defined that as
7 75 percent full. If you fill that cup up three-quarters of
8 the way, that is proving something by clear and convincing.

9 Neither of those two standards are going to be
10 relevant to this particular case. What's relevant to this
11 case, of course, is the highest standard of proof, which is
12 proof beyond a reasonable doubt. Proof beyond a reasonable
13 doubt is getting pretty close to the top of that cup. And if
14 I were to fill that cup up and carry it over to you, it's
15 probably not so full that I would have to take little tiny
16 baby steps because it's so full that I wouldn't want any
17 water to spill out of it, but I also couldn't just, you know,
18 kind of walk over and saunter over. It's somewhere between
19 maybe an inch or a half an inch from the top of that glass,
20 because if you require us to fill it to the top, that's all
21 doubt, if you look at it that way. Filling that cup up to
22 the very top is all doubt. We will never win our case. We
23 probably wouldn't win any case because there are very few

1 things in life that Mr. Bailey or I or any other prosecutor
2 can prove to you beyond all doubt, and I'm going to give you
3 a very simple illustration of that.

4 I'm standing here and I've got a wedding ring on my
5 left finger. I've got pictures of my wife and kids in my
6 wallet. I could probably call my wife up and she could
7 probably be down here from Cortland in probably about half an
8 hour and have her bring all four of my kids, assuming my
9 youngest isn't taking his nap. She might not be happy about
10 it, but I could ask her to do that.

11 They could probably sit in this front row on the
12 bench here and my kids would probably wave at me and say,
13 "Hi, daddy," and my girls may want to come up here and give
14 me a hug or something, and that's probably proof beyond a
15 reasonable doubt that I'm married. I got a wife here, I got
16 kids.

17 But even if you requested more, even if I said,
18 "Hey, bring down the wedding photo album when we got married
19 12 years ago," and she brings down the photo album and it's
20 got pictures of us at a big party and she's dressed in a
21 wedding gown and we're cutting the cake and she's jamming it
22 in the my face like they do, that would probably be proof
23 beyond a reasonable doubt because you're going to use your

1 reason and common sense and say, "Well, listen, the guy's got
2 a ring on; he's going to show me pictures; he brought these
3 kids down here; he's got a photo album of this wedding. He's
4 probably married."

5 But there's some people that are going to want us to
6 prove that beyond all doubt, and even if I presented a
7 marriage certificate and the records from the church somebody
8 may say, "Well, you know, boy, those kids, they could be
9 anybody. And maybe he just dressed up and posed for these
10 pictures that are in this photo album and maybe these
11 documents were created on some high, you know, fancy laser
12 jet printer and they're not even authentic. You know, I need
13 something more to prove to me." Well, that's sort of proving
14 it beyond all doubt, and I can't prove anything to you, even
15 the fact that I'm married and have four kids, to you beyond
16 all doubt. I suppose maybe if I showed you all my bills
17 maybe that would --

18 TROY KAHLER: Yeah, that's what I was
19 thinking about.

20 ATTY. BECKER: But some people would hold
21 us to the unattainable standard of proof beyond all doubt and
22 require us to fill that glass of water to the very top. I'm
23 assuming you would not require the State to prove to you

1 beyond all doubt anything in this case, just reasonable
2 doubt?

3 TROY KAHLER: I would have to take all of
4 the data and review it and then make my decision.

5 ATTY. BECKER: Okay. And if it was
6 reason, if it was based on reason and common sense, and
7 that's one of the dangers sometimes of dealing with people
8 that are a little bit more -- I'm assuming you're a little
9 bit more number oriented, analytical or more number oriented?

10 TROY KAHLER: (Nods head affirmatively.)

11 ATTY. BECKER: And sometimes, especially
12 in the court, we can't quantify anything for you. We can't
13 say listen, the State -- the instruction is not going to be
14 if the State presents to you "X" amount of witnesses and you
15 believe 90 or 95 percent of them, that's reasonable doubt, or
16 95 percent of what they say. It's going to be a reason based
17 on, it's going to be a reason -- let me start again. It's
18 going to be, reasonable doubt is going to be a reasonable
19 doubt based on reason and common sense, and we really can't
20 quantify it because every person is going to have a different
21 idea of that. But you will do that and you will not hold us
22 to proof beyond all doubt of anything in this case, will you?

23 TROY KAHLER: I would again be willing to

1 review the documentation and make a decision.

2 ATTY. BECKER: As well as the testimony
3 and recall the testimony, whatever documents and physical
4 evidence we would present to you?

5 TROY KAHLER: Correct.

6 ATTY. BECKER: You feel comfortable that
7 you can make those kind of determinations?

8 TROY KAHLER: I hope so.

9 ATTY. BECKER: Do you feel comfortable you
10 can make those kind of determinations, first of all, in a
11 case that's involving the death of another individual, a
12 homicide case?

13 TROY KAHLER: Yes.

14 ATTY. BECKER: And do you feel comfortable
15 that if we were able to prove our case again beyond
16 reasonable doubt that you would be able to impose the death
17 penalty if we got to that second phase and were able to show
18 beyond a reasonable doubt that the death penalty was
19 warranted, that these aggravating circumstances outweighed
20 the mitigating factors, which are the bad things? Those are
21 the terms we're going to use when we get there.

22 TROY KAHLER: Again, if the information
23 warranted it, yes, I would consider.

1 ATTY. BECKER: And you would consider it
2 equally with those other four options?

3 TROY KAHLER: Correct.

4 ATTY. BECKER: Now, every criminal case
5 involves a little bit of, particularly this kind of case, may
6 involve a little bit of sympathy. You are going to hear and
7 see testimony and exhibits, because this is a case involving
8 the death of a human being, you're going to see photographs
9 of this individual, you're going to hear testimony about the
10 cause and manner of death. Would that cause you any concern
11 in terms of the type of person you are, because we don't know
12 you, to think, "Boy, this is a very serious case. This
13 individual is dead. I know Mr. Bailey and Mr. Becker didn't
14 really present to me a case beyond reasonable doubt, but I
15 can't let this woman go out of here. They didn't really
16 prove the case but I'm going to find her guilty because of
17 just the fact that someone's dead"? I guess what I'm saying
18 is you wouldn't be so sympathetic to the victim and his
19 family that you felt you had to come back with a verdict of
20 guilty?

21 TROY KAHLER: I feel that I would be able
22 to weigh again the information at hand.

23 ATTY. BECKER: You would be able to

1 separate any feelings you would have of sympathy?

2 TROY KAHLER: Correct. Correct.

3 ATTY. BECKER: And, additionally, you may
4 sit in this courtroom for three or maybe even four weeks as a
5 juror and you may become familiar just through seeing her,
6 Ms. Roberts, and you may say to yourself, "Boy, Mr. Bailey
7 and Mr. Becker really proved to me a lot of things. I
8 believe she's guilty beyond a reasonable doubt, but I don't
9 want to find her guilty because I've seen her, she seems like
10 a nice older lady, and I really don't want to find her guilty
11 because, boy, I just feel so bad for her. She sits over
12 there, she talks to her attorneys. I've seen her smile a few
13 times. I would hate to find her guilty." You wouldn't do
14 that either, would you?

15 TROY KAHLER: I feel confident that I
16 could review the information and make an educated decision.

17 ATTY. BECKER: Okay. All right. In this
18 case there are four charges; there's aggravated burglary,
19 aggravated robbery, and two counts of aggravated murder. The
20 judge is going to tell you you can find the defendant guilty
21 of all of those charges, some of those charges, none of those
22 charges. The aggravated murder counts are what the
23 allegation is that would get us to this second phase. And

1 it's not just the aggravated murder counts because you could
2 find her guilty of aggravated murder and still not get to
3 that second phase, but you have to find her guilty of
4 aggravated murder plus some what we call aggravating
5 circumstances. They're special things that make this case
6 eligible for the death penalty.

7 And one of the easiest ways to explain that is there
8 are many, many different types of homicide under Ohio law.
9 There are probably seven or eight different types of
10 homicides. There's the guy who gets in his car, puts in the
11 keys, he's being drinking for 12, 13 hours. He gets behind
12 the wheel and as he's driving down the road he goes left of
13 center and kills somebody. That case will never be eligible
14 for the death penalty. That's an aggravated vehicular
15 homicide, it's probably a manslaughter charge, but neither
16 one of those is going to make him eligible for the death
17 penalty.

18 We have murder, which is the purposeful killing of
19 another person. That's basically if I walk in there and say,
20 "Boy, I hate sailboats. I don't like those sailboats," and I
21 pull out a gun and I shoot you because you're wearing a
22 sailboat shirt. That's murder, but it's not a death penalty
23 eligible offense that I have for punishment.

1 There is what we call aggravated murder and that is
2 purposely planning and plotting the death of another. That
3 would be an instance where, for instance, if I saw Mr. Bailey
4 walking across the street every day and we've been over here,
5 you know, five weeks picking a jury and I finally say to
6 myself, "You know, I've had enough of him. I'm tired of him
7 sitting there. I'm tired of him telling me what to do just
8 because he's more experienced than I am and, you know, I want
9 to run the show. I'm going to be in charge now, not him.
10 I'm not going to let him call the shots."

11 And I come in here Monday and I know he goes to his
12 office first thing and he gets his cup of coffee and then he
13 sits down and he looks over, you know, what the case is we
14 had for the morning, and while he's doing that, sitting there
15 with his cup of coffee, I'm going to go in there and shoot
16 him. So I plan it, I go out and buy a gun this weekend, I
17 target practice a little bit, and when he comes into his
18 office and he's sitting down with his cup of coffee, I walk
19 in and I shoot and kill him. That's aggravated murder and it
20 carries a higher degree penalty than murder, but it's still
21 not a capital offense.

22 Now let's say I do the same thing, I plot and plan
23 Mr. Bailey's murder, but I'm also going to do something else.

1 I'm going to do what's called a felony murder, I'm going to
2 take his wallet as well because I know he's loaded. He's got
3 lots of money. He scrimps and saves and he's probably always
4 got a thousand bucks in his wallet. I'm going to not only
5 kill him but I'm going to take that thousand bucks because I
6 could really use it to feed my four kids. Now I've committed
7 the aggravated murder; I've planned it, I've plotted it, I've
8 worked all weekend target shooting, I know what his routine
9 is, and now I shoot him, and in addition to that I commit the
10 further offense of stealing his wallet. I've committed this
11 aggravated robbery, I had a firearm on me, and I took his --
12 well, I took his wallet. That now makes me eligible for the
13 death penalty. But even under that crime, even though I'm
14 eligible for it, it's not automatic. So we have these
15 varying levels of crimes and we have these varying levels of
16 homicides.

17 In this particular case there are two different
18 theories. Even though there's only one death, the State is
19 going to present to you two different theories. The Court
20 again will tell you that you can find her guilty of all of
21 the charges or none of the charges. If we prove beyond a
22 reasonable doubt the elements of both theories, you can find
23 her guilty of both theories of aggravated murder. Do you

1 necessarily have a problem with that?

2 TROY KAHLER: No.

3 ATTY. BECKER: The fact that there's only
4 one death. Okay. You understand you can find her guilty of
5 both of them, some of them or none of them?

6 TROY KAHLER: Correct.

7 ATTY. BECKER: All right. And you don't
8 take that to mean that Mr. Bailey and I don't know what the
9 heck we're doing because why would they have two -- there's
10 only one guy dead; why would they have two murder charges?
11 You don't take that to mean we don't know what we're doing,
12 right?

13 TROY KAHLER: Correct.

14 ATTY. BECKER: Just two different
15 theories, right?

16 TROY KAHLER: Correct, theories.

17 ATTY. BECKER: And on the other side of
18 that coin, you don't interpret the fact that there are two
19 aggravated murder charges and only one dead person to mean
20 that Ms. Roberts is really a bad person because, boy, there's
21 only one person dead and they've got two allegations here
22 that she did it? You don't take it that way either?

23 TROY KAHLER: I have to be honest again,

1 I'm totally unaware of all of the elements of this case.

2 ATTY. BECKER: And you're going to -- and
3 yeah, I apologize for having to speak in generalities, but I
4 can't really --

5 TROY KAHLER: Oh, I understand, but I'm
6 being sincere. So to respond, I guess I look at things
7 extremely intellectually at times and then without --

8 ATTY. BECKER: Okay. And that's fine,
9 that's fine. One of the things that I'm going to tell you is
10 that the allegation in this case is that Mrs. Roberts was
11 what we call an aider and abettor under the law. She was a
12 helper basically.

13 TROY KAHLER: Uh-huh.

14 ATTY. BECKER: Does that fact -- or
15 assuming we went to trial and we found her guilty at the
16 guilt phase, would the fact that she is not the shooter, not
17 the principal offender but rather an aider and abettor, would
18 that cause some concern for you or would that make your job a
19 little less likely to impose the death penalty?

20 TROY KAHLER: Again, I still feel I would
21 be able to review the evidence and make a decision.

22 ATTY. BECKER: And follow the law as the
23 Court would give it to you?

1 TROY KAHLER: Uh-huh.

2 ATTY. BECKER: All right. Just about
3 every criminal case involves, and civil cases for that matter
4 too, involve elements of what we call circumstantial
5 evidence, and I'm assuming that's another term that you've
6 become familiar with through the years either in novels or
7 books or anything else you may have read or seen or heard.

8 The most simplistic example that we can give you of
9 circumstantial evidence is, and because it's sort of the
10 rainy season around here, is let's say you go home tonight,
11 you got some things planned tomorrow morning. You want to
12 mow the yard or take the kids fishing or whatever it is you'd
13 like to do tomorrow. And you go to bed tonight at 11:00
14 o'clock and you turn on the 11:00 o'clock news and they show
15 those green lines of thunderstorms on the radar and the
16 weather and they're stretching from Toledo, north of Detroit,
17 all the way down to Cincinnati, and they're moving 30, 40
18 miles an hour to the east and they're heading our way. And
19 the weather guy comes on and says, "Hey, these storms are
20 going to hit sometime between 3:00 and 5:00 this morning.
21 They're going to be pretty heavy at times but they're going
22 to clear out of here by 6:00 or 7:00 in the morning and
23 everything should be clear in the morning and, you know, it

1 will be a beautiful day tomorrow, 75."

2 So you turn off the TV, head down the hall, look out
3 in the driveway, and you see your car there. And you say,
4 "Well, I better roll up the windows," so you go out, get in
5 the car, roll up the windows because you left them down. You
6 go to bed. Sound sleeper, make it through the night. 7:00
7 o'clock in the morning you wake up. Your car is wet, the
8 driveway is wet, the sidewalk is wet, there's water streaming
9 down the street. It's trickling down into the gutter, you
10 see that stream of water. You didn't see it rain, correct?

11 TROY KAHLER: Correct.

12 ATTY. BECKER: You can infer that it
13 rained though, right?

14 TROY KAHLER: Correct.

15 ATTY. BECKER: Sometimes, though, we have
16 to be careful about those inferences. Let's say there's
17 patches of those greens splotches when you go to bed and the
18 guy says hey, they're going to be hit and miss. Some of them
19 may hit Niles. Some of them may hit Kinsman. Cortland and
20 Bazetta may see nothing. Canfield may get rain. It's all
21 going to be hit and miss, we don't know where it's going to
22 go, but there's possibilities.

23 You do the same thing, you go out and roll up the

1 windows in the car, hop in bed, sleep all night. You wake up
2 the next morning and you look out your side bedroom window
3 and you see your neighbor's driveway. The car is wet, the
4 driveway is wet, but you look out to your driveway and the
5 street is dry and you don't see anything. And then you look
6 back and you see your neighbor coming out of his garage and
7 he's got a hose and he's got a bucket of water with soap on
8 it. The inference is that he's washing his car and it didn't
9 rain last night, or, if it did, it didn't last very long
10 because you don't see any rain on the ground, right?

11 TROY KAHLER: Correct.

12 ATTY. BECKER: Would you feel comfortable
13 if there were elements of circumstantial evidence in making
14 this determination, or I guess the proper question is will
15 you feel comfortable making a decision or will you be able to
16 make a decision based in part on circumstantial evidence?

17 TROY KAHLER: I would interpret the
18 information and then make a decision.

19 ATTY. BECKER: Pretty much the same answer
20 you gave before?

21 TROY KAHLER: Yeah.

22 ATTY. BECKER: And part of your job is
23 going to be doing those kind of things, doing exactly those

1 kind of things, weighing witnesses, weighing testimony. For
2 instance, if there's a car wreck and you've got one witness
3 to the case, we could probably prove the case to you if that
4 one witness was solid enough, was accurate enough in the
5 details of his testimony, had a background that wouldn't lead
6 you to believe that he was lying or untruthful, and let's say
7 his vision was 20/20 and he happened to be only 15 feet from
8 where this accident occurred. Those are the kind of things
9 you're going to look for to make your decision, right?

10 TROY KAHLER: Correct.

11 ATTY. BECKER: And if we have a witness
12 who is maybe intoxicated or has something to gain out of the
13 thing, maybe monetary or some other, those are things that
14 you're going to look at and say, "Boy, I know this guy said
15 he saw some things, but boy, he's got a lot of motive and
16 bias and interest in testifying the way he did," correct?

17 TROY KAHLER: Correct.

18 ATTY. BECKER: And you'll be able to make
19 those kind of determinations?

20 TROY KAHLER: I feel comfortable doing
21 that.

22 ATTY. BECKER: All right. Is there any
23 reason that you feel that you could not serve as a fair and

1 impartial juror in this case?

2 TROY KAHLER: None whatsoever.

3 ATTY. BECKER: Nothing pressing at work,
4 because we may be here for three or four weeks?

5 TROY KAHLER: Well, with my employer I
6 have a leave of absence situation that's available, so.

7 ATTY. BECKER: So that should be no
8 problem?

9 TROY KAHLER: Yeah. And I've already
10 spoken to my boss about it.

11 ATTY. BECKER: Okay. And he's aware that
12 you may be seated on this jury?

13 TROY KAHLER: Yeah. And it's part of our
14 employee handbook situation so it's all very --

15 ATTY. BECKER: Sure. Okay. Fair enough.
16 One last thing. I'm assuming you've probably heard through
17 the years of cases where criminals do something stupid and
18 they get caught when they do something ridiculous. You've
19 heard of the phrase, I guess, the best laid plans can go
20 astray?

21 TROY KAHLER: (Nods head affirmatively.)

22 ATTY. BECKER: The guy who goes in to rob
23 a bank and he and his cohort plan it for weeks and weeks and

1 they get the car tuned up, they get the tires rotated, make
2 sure there's enough air pressure in the tires. They scope
3 out the way to and from the bank to their hideout. They make
4 sure they know when the cops change shifts so they know the
5 cops will all be down at the station because the cops that
6 were on duty are down at the police station and the new ones
7 that are coming in, they're probably down there having a cup
8 of coffee and finding out what happened during the day shift
9 or the morning shift.

10 And these guys figure out when the Brinks truck
11 comes in and they figure out that Thursday at 4:00 o'clock
12 would be a great day to rob this bank because at 4:00 o'clock
13 the police are changing shifts and the Brinks truck comes in
14 at 3:00 o'clock to give the bank all the money for all the
15 people on Friday who get paid. And they plan this thing; the
16 guy gets a hat, he gets sunglasses, he gets a fake beard.
17 They go down to the bank, the guy rushes in with the gun. He
18 puts the gun to the teller's face. He's got sunglasses, a
19 ball cap on, a beard. He gives her a note that says "Put all
20 the money in this," you know, "Walmart bag. Don't give me
21 any dye packs or I'll shoot you," and he shows her the gun
22 and she puts all the money in.

23 He runs out and when the police get there they check

1 out the note and, lo and behold, on the other side of the
2 note is the guy's letter addressed to him from somebody and
3 they end up catching him counting the money.

4 TROY KAHLER: Uh-huh.

5 ATTY. BECKER: You've heard of things like
6 that? I don't know if you've heard of a case particularly
7 like that, but you're familiar that sometimes even criminals,
8 no matter how much they plot and plan, they end up getting
9 caught for sometimes a simple or stupid reason, right?

10 TROY KAHLER: Correct.

11 ATTY. BECKER: It wouldn't surprise you
12 if something like that happened in any case, would it?

13 TROY KAHLER: No.

14 ATTY. BECKER: All right. Even if it was
15 a homicide case?

16 TROY KAHLER: Any case.

17 ATTY. BECKER: Okay. It could happen. So
18 just to reiterate very briefly, you feel comfortable trying
19 this case; you will fairly and accurately and evenly weigh
20 all four options if we get to that second phase, correct?

21 TROY KAHLER: Correct.

22 ATTY. BECKER: You have no pressing
23 matters at home or work that would cause you to have any

1 problems serving as a juror, correct?

2 TROY KAHLER: Correct.

3 ATTY. BECKER: You believe you can fairly
4 weigh the evidence and you will weigh the evidence and hold
5 the State to its standard of reasonable doubt and not all
6 doubt, correct?

7 TROY KAHLER: Correct.

8 ATTY. BECKER: And throughout these
9 proceedings you will give Ms. Roberts her presumption of
10 innocence that she's entitled to under the law and not make
11 her have to prove anything to you, correct?

12 TROY KAHLER: Correct.

13 ATTY. BECKER: And if we get to that
14 second phase and if the facts warranted it and the law
15 permitted it, you could go back in that jury room and
16 actually sign a piece of paper that would call for the
17 imposition of the death penalty?

18 TROY KAHLER: If necessary.

19 ATTY. BECKER: Okay. Well, I want to
20 thank you very much, Mr. Kahler, for your time. Again, I
21 apologize for keeping you here a little bit today.

22 TROY KAHLER: That's fine.

23 ATTY. BECKER: Mr. Ingram or Mr. Juhasz,

1 one of those two, will now ask you some questions.

2 TROY KAHLER: Okay.

3 ATTY. BECKER: Okay. Thank you, sir.

4 ATTY. INGRAM: Good afternoon, Mr. Kahler.

5 TROY KAHLER: Hi.

6 ATTY. INGRAM: Are you all right up there?

7 You need some water?

8 TROY KAHLER: If you don't mind, I would
9 like some.

10 ATTY. INGRAM: Sure. Be happy to get you
11 a glass. One of these guys will pour it and I'll get it up
12 there. My name is Jerry Ingram. John Juhasz and I share the
13 responsibility of representing Donna Roberts. As I'm sure
14 you can imagine, we feel it's necessary to take every
15 reasonable precaution in selecting a fair-minded jury, the
16 same type of jury you or I would want to determine our cause
17 if we were on trial. Does that sound fair enough to you?

18 TROY KAHLER: Yes, it does.

19 ATTY. INGRAM: This is the only, this is
20 the only opportunity we'll have to get to know you and for
21 you to determine whether you're comfortable sitting on this
22 panel. Since the purpose of this discussion is for us to get
23 to know you, it really does help if you do most of the

1 talking. But we're lawyers and I guess we're trained, I
2 don't know what the process is, but eventually we tend to
3 monopolize the conversations. So why don't you try to cut
4 off my monopolistic tendencies every now and then and
5 whenever there's something that pops into your mind or
6 something that you would like to say, let me know and we'll
7 discuss those issues. Okay?

8 TROY KAHLER: Okay. Fine.

9 ATTY. INGRAM: This is a lot like a job
10 interview except when you went to Borders for that job
11 interview you chose to go there.

12 TROY KAHLER: Actually they contacted me.

13 ATTY. INGRAM: Well, then it's the same
14 because here we contacted you. What were you doing in life
15 when Borders contacted you for the job up there?

16 TROY KAHLER: I was in the process, I was
17 -- I had spent about four and a half years as an independent
18 scholar. I was commissioned by George Washington's Mount
19 Vernon to research some badges that were created at the time
20 of George Washington's death.

21 ATTY. INGRAM: Were those badges of honor
22 or --

23 TROY KAHLER: They were. I actually

1 brought one, a sample. People always ask me about it. This
2 was the work that I worked on.

3 ATTY. INGRAM: May I see it, please?

4 TROY KAHLER: Yeah, sure. I spent four
5 and a half years researching the material, culture and
6 aspects of that and the aspects then of how we could actually
7 recreate the piece today, and so that's what I was doing
8 prior to going to Borders.

9 ATTY. INGRAM: I'm going to hand that
10 around, okay?

11 TROY KAHLER: That's fine, that's fine.

12 ATTY. INGRAM: Did you get a grant for
13 that independent scholarship study or did you finance it
14 yourself?

15 TROY KAHLER: No. Mount Vernon funded the
16 majority of the project.

17 ATTY. INGRAM: Okay. And you went to Ohio
18 State University, and since they have a good landscape
19 architecture school there, is that where you studied
20 landscaping?

21 TROY KAHLER: Initially.

22 ATTY. INGRAM: And then you also have
23 what, a BS, bachelor of science in education?

1 TROY KAHLER: Science in education.

2 ATTY. INGRAM: You got that from YSU?

3 TROY KAHLER: Youngstown State. And I
4 also have additional studies which I didn't put on there from
5 Case Western and Kent State also.

6 ATTY. INGRAM: What did you study at Case?

7 TROY KAHLER: I worked with their arts
8 department in partnership with the Cleveland symphony
9 orchestra. And then in Kent I took a course in law and also
10 -- boy, it's been a long time. Oh, cripe. I'm sorry, I
11 can't remember what the second class was.

12 ATTY. INGRAM: What was the course in law
13 at Kent?

14 TROY KAHLER: It was for real estate.

15 ATTY. INGRAM: Borders, you're the
16 marketing manager for seven stores.

17 TROY KAHLER: I do marketing management
18 for seven stores at Borders. I have five stores here in Ohio
19 and two stores in New York.

20 ATTY. INGRAM: Do you supervise any other
21 employees?

22 TROY KAHLER: Yes. I'm a multi-unit
23 manager so we have on the average of probably 40 to 60 people

1 working at each one of these stores. And if it's something
2 that effects my marketing, then I'm involved with management
3 of staff.

4 ATTY. INGRAM: Okay. In a nutshell this
5 case boils down to the government's allegation that Donna
6 Roberts plotted or conspired with a male companion by the
7 name of Nate Jackson to cause the death of Robert Fingerhut.
8 You understand that there's one defendant in this case and
9 this case involves the guilt or innocence of one person and
10 one person only?

11 TROY KAHLER: Correct, I understand that.

12 ATTY. INGRAM: Throughout these
13 proceedings you will hear the name Nate Jackson and you may
14 conclude that Mr. Jackson did what the State says he did. Do
15 you understand that that's not what you are here to
16 determine, Mr. Jackson's guilt or innocence?

17 TROY KAHLER: No, but I'm sure there will
18 be references to him if he's involved in this case.

19 ATTY. INGRAM: Yes, there will be
20 references to him, but the State's burden of proof is to
21 prove that Donna Roberts actively assisted or participated in
22 these events. Do you see that?

23 TROY KAHLER: Oh, yes, I understand. I

1 understand that.

2 ATTY. INGRAM: In support of its
3 allegation that Donna aided or participated in the death of
4 Robert Fingerhut the State will present various letters and
5 tape recorded telephone conversations. Some of this evidence
6 may be sexually explicit in nature. Some of it might be
7 downright offensive. Even though you may be offended by the
8 sexual nature of some of this evidence, your job
9 responsibility will require that you sort of rise above that
10 offense to test the evidence and to determine whether it ties
11 Donna to these events. Do you see that?

12 TROY KAHLER: I understand, sir.

13 ATTY. INGRAM: Now, Mr. Becker when he was
14 talking with you asked you on a couple of occasions about
15 your willingness to sign verdicts. Do you recall those
16 questions?

17 TROY KAHLER: Yes, sir.

18 ATTY. INGRAM: Whether you would be
19 willing to sign a guilt verdict, whether you'd be willing to
20 sign a death verdict. I'm not going to ask you about your
21 willingness to sign verdicts, but do you understand no one is
22 asking you to prejudge this case?

23 TROY KAHLER: Oh, definitely, sir.

1 ATTY. INGRAM: Would you have the courage
2 to acquit, that is vote not guilty, if you thought a not
3 guilty verdict was warranted by the evidence?

4 TROY KAHLER: Definitely.

5 ATTY. INGRAM: I have to talk to you about
6 punishments. Before we get to that issue, though, I want to
7 explain to you a concern I have. We're all talking to you
8 about punishment, the judge, the prosecutor, myself, and you
9 don't even know if the person that you're here to determine
10 or talk about has done anything wrong or not. It seems to me
11 a whole heck of a lot like putting the cart before the horse,
12 to coin an old adage. Do you see what I mean by that?

13 TROY KAHLER: I'm sure part of it is the
14 case itself and the penalties that could be imposed and they
15 want to make sure that people have a complete understanding
16 of that.

17 ATTY. INGRAM: That's right. And we have
18 to ask these questions now. These questions have nothing to
19 do with Donna's guilt or innocence, do you understand that?

20 TROY KAHLER: I understand that
21 completely, sir.

22 ATTY. INGRAM: When I read the
23 questionnaire I thought I understood your views on the death

1 penalty. After your conversation with Mr. Becker I'm not so
2 sure. So pretend that I'm one of these motivational people
3 that come to Borders and give a little seminar and my seminar
4 is on communications and I'm going to talk to people there
5 about how to communicate, how to express how you feel, and
6 I'm going to use you as my first person when I'm there. I'm
7 going to give you a minute or two and I want you to tell the
8 rest of us your feelings regarding the death penalty.

9 TROY KAHLER: I view that it is something
10 that is currently used or available in our society as a means
11 to -- what am I looking for? As a means to -- the term is
12 not coming to my mind. To impose justice for crimes that may
13 or may not have been committed and people have been found
14 guilty. I don't view the death penalty as something, as I
15 stated earlier, I believe that should be automatically
16 imposed in every single instance. Again, we're talking about
17 four different elements of possible sentencing, am I correct?

18 ATTY. INGRAM: Okay. Four -- for the time
19 being here we're going to forget about the law and we're
20 going to forget about the preliminary instructions you read
21 downstairs and for the time being we're just going to talk
22 about your personal view. Then we'll return to the law and
23 the preliminary instructions. Does that sound fair to you?

1 TROY KAHLER: Outside of the case then?
2 Outside of the case I'm not opposed to the death penalty in
3 certain cases if it's necessary.

4 ATTY. INGRAM: Okay. In your personal
5 view are there situations where you think that the death
6 penalty should be automatic or required upon a conviction?

7 TROY KAHLER: No.

8 ATTY. INGRAM: We've recently had some
9 renewed debate in this country about whether or not we should
10 even have the death penalty, and part of that debate evolved
11 around the State of Illinois where there was a moratorium put
12 on executions. Were you exposed to any of that debate?

13 TROY KAHLER: No. The only thing that
14 I've really reviewed with the death penalty I think was the,
15 oh, probably from the 1890s at the point in time that the
16 electric chair became a means of the death penalty and some
17 of the problems that they had with that. But other than
18 that, I haven't reviewed any.

19 ATTY. INGRAM: Well, how did you have
20 occasion to review that data about the electric chair?

21 TROY KAHLER: I ran across a book that we
22 had at the store.

23 ATTY. INGRAM: Since I might be

1 interested, what was the name of the book, do you remember?

2 TROY KAHLER: *Perfect Endings* I think was
3 the title of it.

4 ATTY. INGRAM: Did you ever read the --
5 what was that book by Stephen King, *The Long Mile*?

6 ATTY. JUHASZ: *The Green Mile*.

7 ATTY. INGRAM: *The Green Mile*. Did you
8 ever read *The Green Mile*?

9 TROY KAHLER: No. But if you ever want to
10 meet Stephen King he's always at our Borders store in Maine
11 on Christmas Eve, he signs. He'll just show up some time
12 during the day and sign.

13 ATTY. INGRAM: Well, I may have to go up
14 there some Christmas Eve. And, by the way, you met Johnny
15 Cochran, is that right?

16 TROY KAHLER: Correct.

17 ATTY. INGRAM: Who impressed upon you the
18 importance of jury service --

19 TROY KAHLER: Correct.

20 ATTY. INGRAM: -- as a civic
21 responsibility. Well, you're not going to hold any of the
22 lawyers in this room to the persona of Mr. Cochran, are you?
23 You know, none of us here make a million dollars a case.

1 TROY KAHLER: Well, actually you're all
2 taller than he is, and I'm a little bit smaller than his
3 bodyguard, so.

4 ATTY. INGRAM: You ever hear someone say
5 I'm not in favor of life imprisonment as an alternative to
6 the death penalty because I don't believe that we, the
7 taxpayer, should have to pay?

8 TROY KAHLER: In the past I've heard
9 people make comments of that nature.

10 ATTY. INGRAM: Do you have any opinion on
11 that cost issue?

12 TROY KAHLER: On the cost issue itself?

13 ATTY. INGRAM: Yes.

14 TROY KAHLER: No.

15 ATTY. INGRAM: How do you feel about life
16 imprisonment as an alternative to the death penalty?

17 TROY KAHLER: Again, if it's something
18 that has to be considered based on the individual case, then
19 so be it.

20 ATTY. INGRAM: You ever considered a
21 political candidate's views on the death penalty in
22 determining whether to vote for that candidate?

23 TROY KAHLER: No, sir.

1 ATTY. INGRAM: You ever seen a movie
2 called *True Crimes* starring Clint Eastwood?

3 TROY KAHLER: No, sir. Typically what I
4 do is, if I have anyone coming in, I review their work prior
5 to their coming to the Cleveland market so that I can best,
6 you know, suit the event around them. I don't have time to
7 watch television or review particular movies. I think the
8 last movie I went to see was the *Titanic*.

9 ATTY. INGRAM: Well, at least it was a
10 good one. We're going to stay outside of this case. We'll
11 make up a second stage in some other capital case.

12 TROY KAHLER: Okay.

13 ATTY. INGRAM: When a capital juror gets
14 to a second phase, and let's say it's a case like in
15 Youngstown where there's someone convicted of the aggravated
16 murder of, the aggravated murder of a policeman in the line
17 of duty.

18 TROY KAHLER: Okay.

19 ATTY. INGRAM: That would be a capital
20 conviction because there would be an aggravated murder and
21 there would be a death spec, the fact that the policeman was
22 in the line of duty. First off, is that a situation where
23 you feel that the death penalty should be automatic or just

1 one where it should be an option?

2 TROY KAHLER: Again, minimal amount of
3 conversation about this, I guess it shouldn't be an automatic
4 option. Again, you know, all of this is a hypothetical
5 situation --

6 ATTY. INGRAM: Right, uh-huh.

7 TROY KAHLER: -- and unless I've actually
8 reviewed the documentation. Again, I deal with things like
9 this all day for a living and I'm very conscious about
10 commenting until I'm familiar with the parameters of what I'm
11 dealing with.

12 ATTY. INGRAM: Okay. But in our
13 hypothetical scenario I think we know the parameters. There
14 is a conviction of aggravated murder of a policeman in the
15 line of duty. Even in that case your oath would require you
16 to equally consider all four sentencing options. Do you
17 understand that?

18 TROY KAHLER: Oh, yes, I understand.

19 ATTY. INGRAM: Is there anything in your
20 personal belief structure which would interfere with your
21 ability to equally consider any of the sentencing options?

22 TROY KAHLER: No.

23 ATTY. INGRAM: Do you understand that if

1 you ever got to a second phase your oath would require you
2 to equally and fairly consider all four options?

3 TROY KAHLER: Yes.

4 ATTY. INGRAM: And if you ever got to a
5 second phase, it would be the State's burden to prove to you
6 beyond a reasonable doubt that the death penalty was the
7 appropriate penalty.

8 TROY KAHLER: Yes, I understand that.

9 ATTY. INGRAM: And certainly you would
10 hold them to that burden?

11 TROY KAHLER: Yes.

12 ATTY. INGRAM: Have you ever, have you
13 ever donated any time, money or services to a political
14 campaign or issue?

15 TROY KAHLER: No.

16 ATTY. INGRAM: Do you belong to any group
17 or organization which is active in any political matter?

18 TROY KAHLER: I used to belong to the
19 Warren Chamber of Commerce and I believe at that point in
20 time they were starting to think about addressing various
21 political issues, but to my knowledge I don't know if they
22 have or not.

23 ATTY. INGRAM: You were on the board?

1 Were you on the board of --

2 TROY KAHLER: I was never on the board, I
3 was just a member. I thought you had inquired if I had
4 belonged to any organizations.

5 ATTY. INGRAM: Well, I was actually going
6 to another question. I'm sorry. In the last five years or
7 so have you signed a petition on any public issue?

8 TROY KAHLER: The only petitions that I've
9 signed in the past five years were for people running for
10 office here locally.

11 ATTY. INGRAM: Did you circulate any of
12 those petitions or did you just sign it when someone knocked
13 at the door?

14 TROY KAHLER: Just signed it, yeah. It
15 was for a person running for Board of Education.

16 ATTY. INGRAM: Do you belong to or
17 associate with any group which has crime prevention or law
18 enforcement as a goal?

19 TROY KAHLER: No, I don't.

20 ATTY. INGRAM: You talked briefly with
21 Mr. Becker about sympathy. I'm sure you would agree with me
22 this is a court of law, not a court of sympathy?

23 TROY KAHLER: Correct.

1 ATTY. INGRAM: The judge will tell you
2 you should not permit feelings of sympathy to effect your
3 evaluation of the evidence. But in this country we leave the
4 tough jobs to the jury, and stopping sympathy from effecting
5 how you look at things is probably one of those things that
6 is easier said than done, but you'll have to do your best.
7 Are you up to that, do you think?

8 TROY KAHLER: Sir, believe me, I'm
9 bombarded with so many decisions each day that, again, I'm
10 very adept with reviewing information at hand.

11 ATTY. INGRAM: Well, in this case you're
12 going to see some evidence in the form of maybe crime scene
13 photographs, you'll see a dead person on the ground, and
14 coroner's photographs, coroner's testimony. Some of this
15 stuff may evoke an emotional response from you. It may be
16 sympathy or may be anger, "How could somebody do this?" But
17 even though there is an emotional response, you're still
18 going to have to test this evidence to determine whether it
19 ties Donna to these occurrences. Are you up to that?

20 TROY KAHLER: I've seen forensic medicine
21 publications and things that we carry at the store, so yes.

22 ATTY. INGRAM: Those are hard to get. Do
23 you guys carry them?

1 TROY KAHLER: We order them for people
2 from time to time for various concerns.

3 ATTY. INGRAM: Now, I probably shouldn't
4 go where I'm going but I'm diving right in. I tell most
5 jurors when I get to this point that I'm going to sound like
6 a civics teacher, but, you know, 225 years ago or thereabouts
7 our forefathers declared independence, fought and died so
8 that we could be free, and they passed some laws. They
9 included the Bill of Rights to the Constitution because they
10 couldn't get the Constitution passed or ratified without the
11 Bill of Rights. Many of the laws they wrote were designed to
12 curb or restrict the power of the government, and one of the
13 things they provided to restrict the power of government was
14 the presumption of innocence.

15 If you want to increase the power of a governmental
16 agency you create a presumption of guilt and people they
17 arrest are presumed guilty. How do you personally feel about
18 the rule of law which requires that a trial juror presume the
19 defendant innocent?

20 TROY KAHLER: In my finding I have no
21 problem with that, for assuming people are innocent until
22 they're tried and possibly found guilty.

23 ATTY. INGRAM: A lot of people think that

1 to one degree or another we have a crime problem underfoot in
2 this country. Do you have any ideas what we, and by "we" I
3 mean society as a whole, might do to at least begin
4 addressing that crime problem?

5 TROY KAHLER: Actually I spent a half a
6 day with Rudy Giuliani in November and Rudy said that the
7 first thing he did every morning when he went to work in New
8 York City was to review the percentages of crime in the city,
9 what sort of crimes they had been, had they been murders,
10 rapes, what have you. And as soon as he saw a one percent
11 increase in any given part of the city they immediately sent
12 more forces into that given area, and he felt that it was, of
13 course, very successful for New York City. And I guess if I
14 had to say to any community, you know, how would you go about
15 addressing crime, Rudy really had a decent approach to
16 helping a city with millions of people, so.

17 He said that one of the main problems is that cities
18 will wait until the percentages start to reach 10, 15, 20
19 percent, and then he said at that time it becomes extremely
20 difficult to try to suppress the crime rate increasing.

21 ATTY. INGRAM: I have some friends who are
22 concerned about the crime problem and they have in their
23 minds a solution which they actually advocate, and one of

1 their solutions is replacing the presumption of innocence
2 with a presumption of guilt. And in this country they are
3 certainly free to feel that way. Do you think they would
4 make good jurors if they truly believe that way?

5 TROY KAHLER: I've never even considered
6 it.

7 ATTY. INGRAM: Okay.

8 TROY KAHLER: I think it's kind of absurd.

9 ATTY. INGRAM: The same thing with the
10 burden of proof. You know, these guys have leveled this
11 allegation. Now it's time for them to put up or shut up.
12 They got to prove it.

13 TROY KAHLER: Correct.

14 ATTY. INGRAM: You understand that Donna
15 is on trial for murder, not for being a woman of loose moral
16 character?

17 TROY KAHLER: Again, I'm not familiar with
18 the case so I can't assume.

19 ATTY. INGRAM: Okay. But she is on trial
20 for murder, right?

21 TROY KAHLER: Correct.

22 ATTY. INGRAM: And they may prove she's a
23 woman of loose moral character, but they have to prove that

1 she aided a murder. Do you have that in mind?

2 TROY KAHLER: Oh, yes, I understand that,
3 sir.

4 ATTY. INGRAM: Now, she doesn't have to
5 testify, and if she elects not to testify you can't hold it
6 against her. Do you have any problem or qualm with that
7 rule?

8 TROY KAHLER: If it's permissible within a
9 court of law, no.

10 ATTY. INGRAM: Well, it is permissible.
11 Did you know that?

12 TROY KAHLER: No, I have no idea. Again,
13 I have never been involved in this sort of situation.

14 ATTY. INGRAM: At work if you're ever
15 called upon to resolve a dispute between two co-employees or
16 two people that you supervise, the natural inclination is to
17 sit them both down and ask, okay, both of you tell me your
18 side of the story. Does that sound reasonable to you?

19 TROY KAHLER: It could in some
20 circumstances. Usually I turn it over to our HR person and
21 let them take care of it.

22 ATTY. INGRAM: Well, this is where the HR
23 person is on vacation and you can't duck the responsibility,

1 or are you going to duck it with someone else?

2 TROY KAHLER: I'd still have to because of
3 our employee hand -- my job description won't permit me to
4 get involved in this sort of thing, so.

5 ATTY. INGRAM: Well, you do see, don't
6 you, that usually in our everyday life when we're called upon
7 to resolve a dispute the first thing we say is I want to hear
8 both sides of this dilemma?

9 TROY KAHLER: (Nods head affirmatively.)

10 ATTY. INGRAM: In this case your oath as a
11 juror may require you to put aside that natural inclination.
12 Do you think you're up to that?

13 TROY KAHLER: I feel so, sir.

14 ATTY. INGRAM: If Donna does testify she's
15 a witness just like any other witness. You would use the
16 same rules or standards for determining her believability as
17 you use for determining the believability of other witnesses.

18 TROY KAHLER: Correct.

19 ATTY. INGRAM: But she's the defendant
20 here, right?

21 TROY KAHLER: Uh-huh.

22 ATTY. INGRAM: So she has an interest or a
23 stake in the outcome of this case, doesn't she?

1 TROY KAHLER: Correct.

2 ATTY. INGRAM: And the judge will give you
3 or tell you when he gives you the instruction on credibility
4 that that's one of the things you may consider in determining
5 whether to believe a witness, whether the witness has an
6 interest or a stake in the outcome of this case. If you
7 consider that factor for her, to be fair then you should also
8 consider it for every other witness who testifies if you
9 find that any other witness has something to gain. Do you
10 see what I mean?

11 TROY KAHLER: (Nods head affirmatively.)

12 ATTY. INGRAM: The judge is also going to
13 tell you that you should apply to every witness that
14 testifies something he'll call the test of truthfulness that
15 you employ in your daily life. Now, over the years you have
16 to decide whether someone is being straight with you or
17 trying to hoodwink you. That has happened to you, hasn't it?

18 TROY KAHLER: Uh-huh, yes.

19 ATTY. INGRAM: And you've developed an
20 almost intuitive sense or a sixth sense that assists you in
21 making that determination?

22 TROY KAHLER: (Nods head affirmatively.)

23 ATTY. INGRAM: He is going to tell you

1 that you should bring that intuitive sense in here and apply
2 it to every person who testifies. Will you do that?

3 TROY KAHLER: Yes.

4 ATTY. INGRAM: Reasonable doubt, as the
5 term implies, is based on reason and common sense. And when
6 the judge defines it for you he's going to tell you that
7 reasonable doubt requires that you be firmly convinced and is
8 proof of such character that you would be willing to rely and
9 act upon it in the most important of your own affairs. When
10 you have to make some important marketing decision -- you
11 need more or are you all right there?

12 TROY KAHLER: No, I'm fine.

13 ATTY. INGRAM: When you have to make an
14 important marketing decision at Borders sometimes those
15 decisions will have positive factors and sometimes negative
16 factors, right?

17 TROY KAHLER: Usually it's positive.

18 ATTY. INGRAM: Okay. There's no negatives
19 ever?

20 TROY KAHLER: I'm kind of an abnormal
21 situation at Borders. They can't quite figure out what to do
22 with me, but more often than not we have initiatives and my
23 boss will go "How?"

1 ATTY. INGRAM: How, how'd you do it?

2 TROY KAHLER: Yeah, because we tend to
3 exceed the company's expectations frequently.

4 ATTY. INGRAM: Well, maybe I should hire
5 you for something. Well, let's take this decision out of
6 Borders and make it a decision in your personal life. You
7 know what, I'm going to take you out of the equation and I'm
8 going to make the decision.

9 I want to buy a house, and because I'm a lot less
10 decisive than you I sometimes have to make a list either on a
11 sheet of paper or in my mind's eye. I put the positives on
12 one side, the negatives on the other. And if it's a house, I
13 need four bedrooms, that's a good thing; three bathrooms,
14 that's a good thing; good school system; that's a good thing.
15 Most important, my wife likes it. That should be No. 1
16 actually because if she doesn't like it I can't buy it.

17 Then I got a couple negatives though. This house is
18 50 years old and I'm concerned with the structural stability,
19 there's some plumbing problems and I'm concerned about the
20 cost of repairs, and I'm concerned with my ability to make
21 the mortgage payment month in and month out. You following
22 me?

23 TROY KAHLER: Uh-huh.

1 ATTY. INGRAM: Well, I'm going to balance,
2 I'm going to investigate those negatives to see if I can
3 strike them off the right-hand side because, if I can, then
4 it's more probable that I'm making the right decision,
5 correct?

6 TROY KAHLER: Uh-huh.

7 ATTY. INGRAM: So I write in an
8 inspection. I get a contractor who says, "Hey, Ingram, this
9 house is brick solid, baby." I strike that one then, don't
10 I?

11 TROY KAHLER: (Nods head affirmatively.)

12 ATTY. INGRAM: I call a plumber. "I can
13 fix this plumbing, it's 200 bucks." I strike that. But I go
14 to the bank, I say, "Can you extend this loan so that my
15 monthly mortgage payment is reduced?" No. "Can you maybe
16 reduce the interest rate so my monthly payment is reduced?"
17 No. I try to get a raise, I try to rebalance my spending
18 habits, but no matter how much I investigate it, no matter
19 how much I question it, my doubt as to my ability to make
20 that mortgage payment every month remains reasonable in my
21 mind. There's now one reasonable negative on the right-hand
22 side, correct?

23 TROY KAHLER: I guess, yes.

1 ATTY. INGRAM: Well, assuming that there's
2 one reasonable negative on the right-hand side, I cannot say
3 beyond a reasonable doubt that that decision is the right
4 thing for me. Do you see that?

5 TROY KAHLER: Yes. But again, to play the
6 devil's advocate here, you virtually can get a loan for
7 anything now so you just would have to look for another loan
8 officer or a different company to go with.

9 ATTY. INGRAM: Yeah, you can go get a
10 loan, but who is paying it back for me?

11 TROY KAHLER: Well, believe me, it can be
12 done.

13 ATTY. INGRAM: Not on, not with my money.

14 TROY KAHLER: They're making all of these
15 improvements so.

16 ATTY. INGRAM: Okay. Do you enjoy this?

17 TROY KAHLER: I find it intriguing.

18 ATTY. INGRAM: Mr. Bailey and I have a
19 long professional relationship.

20 TROY KAHLER: It has nothing to do with
21 the case, but we have attorneys on either side of us, my wife
22 and I, so we are constantly harassing them.

23 ATTY. INGRAM: Who are they?

1 TROY KAHLER: Oh, we have Cal Woodward on
2 one side and Gary Rich on the other.

3 ATTY. INGRAM: That's an odd pair.

4 TROY KAHLER: Yeah, it's very odd.

5 ATTY. INGRAM: Which one do you pick on
6 more?

7 TROY KAHLER: Neither. We pick on both of
8 them.

9 ATTY. INGRAM: Equally?

10 TROY KAHLER: Yeah, so.

11 ATTY. INGRAM: You talked to these guys
12 about circumstantial evidence, and I'm sure you know what
13 circumstantial evidence is.

14 TROY KAHLER: (Nods head affirmatively.)

15 ATTY. INGRAM: You understand that
16 everybody here can ask you to make an inference, but whether
17 you make that inference is solely and exclusively up to you?

18 TROY KAHLER: I understand, sir.

19 ATTY. INGRAM: And whether you make an
20 inference or not is going to depend in large part upon
21 whether the inference seems reasonable to you, correct?

22 TROY KAHLER: Correct.

23 ATTY. INGRAM: And you might imagine that

1 it tends to get a little tricky if you start to pile an
2 inference upon an inference. For instance, if it's a Sunday
3 morning and I'm looking out my window and I see footprints in
4 the snow from the house to the right of me, which in your
5 case would be Gary Rich's house, to my front door, and then
6 from my front door to Cal Woodward's front door, I can infer
7 that somebody walked in the snow.

8 TROY KAHLER: Correct.

9 ATTY. INGRAM: If I infer who that person
10 is I'm piling an inference on an inference. Do you see that?

11 TROY KAHLER: Uh-huh.

12 ATTY. INGRAM: But, you know, I like to do
13 those things so I assume that my Sunday paper is down there
14 because it was the paperboy, until I opened the door and I
15 see my Giant Eagle coupons. Will you test every inference
16 that you're asked to make in this case?

17 TROY KAHLER: I feel more than capable to,
18 sir.

19 ATTY. INGRAM: Okay. Thank you. That's
20 nice work, by the way.

21 THE COURT: Do you wish side bar?

22 ATTY. INGRAM: No.

23 ATTY. BECKER: No.

1 THE COURT: Pass?

2 ATTY. BAILEY: Pass.

3 ATTY. BECKER: Pass.

4 THE COURT: Okay. I have one question for
5 you. You work for Borders?

6 TROY KAHLER: Yes. Actually, sir, I work
7 for Borders Group which owns Borders stores.

8 THE COURT: How do we all get 60 percent
9 discounts?

10 TROY KAHLER: Actually we're thinking
11 about having a legal profession discount.

12 THE COURT: Okay. Listen, you will be in
13 the pool from which we are going to make our last selection
14 on Monday. You should be here at 11:00 o'clock.

15 TROY KAHLER: On Monday at 11:00?

16 THE COURT: On Monday morning. And I
17 would again remind you not to discuss anything or form any
18 opinion about anything.

19 TROY KAHLER: No, no.

20 THE COURT: You know that. You will get
21 sick of me saying that, but I have to say that to you all the
22 time. But I liked one of your comments in here about the
23 courts being overworked and understaffed. I thought that was

1 very cogent.

2 TROY KAHLER: Well, sir, I'm well aware of
3 it.

4 THE COURT: Thank you very much.

5 TROY KAHLER: Thank you. I appreciate it.

6 THE COURT: Okay.

7 ATTY. BECKER: Thank you.

8 (Whereupon, Troy Kahler was added to the pool of prospective
9 alternate jurors and excused for the day, after which, Court
10 was recessed for the evening.)

11 * * *

12 SEE VOLUME XXIII

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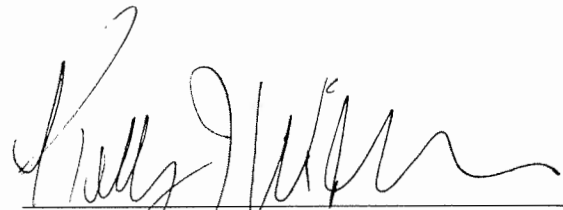
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REPORTER'S CERTIFICATE

This is to certify the foregoing represents a true and correct copy of the proceedings had in the aforementioned cause as reflected by the stenotype notes taken by me on the same.



KELLY J. WILSON
Official Court Reporter

IN THE COURT OF COMMON PLEAS

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	) Case No. 01-CR-793
Plaintiff	) Appeal No. 03-T-56
)
-vs-	) Judge John M. Stuard
)
DONNA M. ROBERTS,	) TRANSCRIPT OF PROCEEDINGS
Defendant	) VOLUME XXIII

Jury Trial proceedings on Monday, May 12, 2003 and Tuesday,
May 13, 2003

BEFORE: HONORABLE JOHN M. STUARD

AT: Trumbull County Court of Common Pleas
Courtroom Number 2
161 High Street, NW
Warren, Ohio 44481

APPEARANCES:

On behalf of the State of Ohio:

Messrs. Ken Bailey & Christopher Becker
Assistant Prosecuting Attorneys
Warren, Ohio

On behalf of the Defendant:

Messrs. John Juhasz & Gerald Ingram
Attorneys at Law
Youngstown, Ohio

Official Court Reporter: Lori J. Rittwage

I N D E X - VOLUME XXIII

MONDAY, MAY 12, 2003

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LISA R. MASSARY.....	4873
JOANNE M. BATES.....	4958

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OPENING STATEMENT ON BEHALF OF THE STATE OF OHIO.....	5065
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OPENING STATEMENT BY THE DEFENDANT.....	5095
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1 MONDAY, MAY 12, 2003

2 (Whereupon, the following individual voir dire occurred in
3 open court at 9:25 a.m.)

4 PROSPECTIVE JUROR KRISTINA M. HOLMES,

5 EXAMINATION BY THE COURT:

6 Q Good morning.

7 A Hi.

8 Q Miss Holmes, you read that handout that was given to
9 you?

10 A Yes.

11 Q Okay. You understand why we're here. There are two
12 counts of aggravated murder with the specifications that have
13 been filed against Donna Roberts by the State of Ohio.

14 In Ohio, just because someone commits a murder does
15 not mean that they automatically face the death penalty. The
16 legislature, in drafting the statute that applies to murders,
17 aggravated murder, has ordained that if an aggravated murder
18 is committed with certain attending circumstances which we
19 call or which are put in the indictment as specifications,
20 then any of those things in the statute that qualifies as a
21 specification means that the possibility of the jury having
22 to consider the death penalty arises.

23 An example is if somebody murdered Robert Taft and

1 was found guilty of aggravated murder, if the State had
2 failed to put on the specification that he is the governor of
3 Ohio then it would not be a death penalty case. But if they
4 attach the specification that Bob Taft was murdered with
5 aggravating circumstances and that he was the governor, then
6 that would mean that the jury would have to consider and
7 possibly impose the death penalty.

8 Now we have no idea what this jury is going to do
9 because the evidence has not been presented yet. If the
10 State fails to prove beyond a reasonable doubt each and every
11 element necessary to prove aggravated murder or to -- then
12 this jury would make a finding of not guilty. That would be
13 the end of the trial.

14 If, however, the State proves the elements of
15 aggravated murder and the specifications attached, then they
16 are going to have to consider imposing the death penalty
17 along with three other considerations, and that is life
18 imprisonment without chance of parole or life imprisonment
19 with no chance of parole before 25 or 30 years. There are
20 four options.

21 Now, we can't very well wait until the jury makes
22 the decision as to guilt or not guilt, not guilty, because if
23 they do find that Miss Roberts is guilty, they have to go to

1 that second phase and it's too late then to question them
2 concerning their views on the death penalty. If we waited
3 until that point, we may have somebody on that jury who
4 believes in an eye for an eye, if you kill somebody, you
5 should lose your life. That isn't the law in Ohio so that
6 person couldn't be fair to the defendant.

7 The defendant has the right to have the jury, if we
8 get to that stage, of weighing the aggravated circumstances
9 against any mitigating factors. Mitigating factors would be
10 reasons put before the jury as to why they should not, in
11 this particular case, impose the death penalty. And the
12 aggravating circumstances would be reasons the State would
13 submit to the jury that they should consider and impose the
14 death penalty.

15 Now, the burden is on the State at all times to
16 prove beyond a reasonable doubt all elements of the
17 aggravated murder and the specifications. There's no duty on
18 the defendant to do anything. That's difficult in one way
19 for some people to understand because we always expect that
20 people are going to come forth and say something to exonerate
21 themselves. But under the law, and that's a very important
22 part of the law, the defendant need not say anything. They
23 have the absolute right to remain silent. The reason for

1 that is it's the State's case to win or lose. The evidence
2 has to come from the State as to whether they have proven
3 their charges or not. If they fail to prove that, then the
4 jury must return a verdict of not guilty.

5 Likewise, if we had a juror who could, under no
6 circumstances, even consider imposing the death penalty, some
7 people, for ethical or moral reasons, could not visualize
8 themselves making that decision. Well, a person of that mind
9 could not be fair to the State of Ohio. The State has the
10 right to ask for the death penalty if they prove their case.

11 So it's necessary to get some understanding of what
12 each potential juror's view is. Now, whatever your view on
13 the issue of capital punishment is is fine. We all hold some
14 view on the matter. Whatever your view is will be respected
15 by these folks who will be asking the questions. But it's
16 important that they know what you truly feel about the
17 subject. I can't think of anything worse than to have
18 somebody on that jury getting to that point where they have a
19 duty to follow the law and they would be unable to do so
20 because of some strong belief one way or the other. Okay?

21 The second issue will be about any pretrial
22 publicity that you may have been exposed to. Some people
23 that we've interviewed have heard something about the case,

1 some have heard nothing, some have heard a great deal. But
2 the important point there is whether or not each of these
3 jurors will be able to set aside anything that they heard or
4 think they know about the case, because in order for the
5 matter to be tried fairly, for both sides to get a fair
6 trial, this jury has to decide this matter on the evidence
7 they hear in this courtroom. Anything that happened outside
8 this courtroom is not evidence. It has to be presented here.
9 Okay? Fair enough.

10 Are you a little bit apprehensive or what?

11 A I don't know. I don't like being here.

12 Q Okay. That's, that's the reason that we're going
13 through this questioning.

14 Mr. Bailey, in lieu of nobody else there, I'll call
15 upon you.

16 MR. BAILEY: Thanks, Your Honor.

17 EXAMINATION BY MR. BAILEY:

18 Q Miss Holmes, hi.

19 A Hi.

20 Q My name is Ken Bailey. You probably saw me in the
21 other courtroom. I guess it's been over, what, five weeks
22 now?

23 A Uh-huh.

1 Q And I promised you last time that Chris Becker, my
2 co-counsel, will be here this time. He is here, but he'll be
3 back in a minute; okay?

4 A Okay.

5 Q But the two of us are responsible for prosecuting
6 this case on behalf of the people of the State of Ohio and
7 the people of Trumbull County. Okay.

8 We're going to ask you some questions or I'm gonna
9 ask you some questions and then defense counsel is going to
10 ask you some questions. The reason we ask these questions,
11 it's gonna deal with your opinions on different things and
12 your prior experiences. And it's not because we're snoopy
13 and we like to pry into peoples' backgrounds, but rather to
14 make sure that the folks that we've selected to serve on this
15 particular jury can be fair and impartial to both sides, both
16 to the defendant and to the people of the State of Ohio. And
17 that's why we ask these particular questions. There aren't
18 any right answers. There aren't any wrong answers. Just
19 open and candid answers. Okay? If you have any questions
20 that come up pertaining to what we're doing here, feel free
21 to ask them at this time. Because after we're done here
22 today, we can't have any communication with you until this
23 case is entirely over. If it goes into two different phases,

1 you have to wait until the end of the second phase until you
2 can talk to us. If we run into each other out in the hallway
3 or in the elevator or in a restaurant, we're not allowed to
4 have any communication except maybe to say good morning or
5 good afternoon because if we do, it would be improper and it
6 could result in a mistrial and we don't want to do this all
7 over again; okay?

8 A Okay.

9 Q And just so you know, we're not trying to snub you
10 or be antisocial; okay?

11 A Uh-huh.

12 Q Are you relaxing a little bit up there?

13 A Yeah. A little.

14 Q Okay. That's good. I'm gonna ask you some
15 questions. I'm gonna ask you a couple of, one or two
16 questions about some other things first and then I'm going to
17 get into this issue of death penalty as a punishment and I
18 expect pretrial publicity and then some regular questions.

19 You had mentioned on your questionnaire that you
20 filled out that you have an impending wedding?

21 A Uh-huh.

22 Q Okay. And you've been quite busy with that?

23 A Yeah.

1 Q Do you think, when are you getting married?

2 A In August.

3 Q Okay. And this is May already. Getting close to
4 the middle of May. So are you, and with your work and
5 everything, does it give you a lot of time for wedding
6 preparations or are you kind of rushed?

7 A I work two jobs. I only have one day off a week
8 from both jobs.

9 Q Okay. So do you need, you get, I imagine, with your
10 positions -- this trial is gonna take probably three weeks.
11 We're going three and a half days a week for this week, the
12 next week and the week after and I expect we might finish the
13 first phase by the end of three weeks. And then if we go
14 into a second phase, there would probably be a break of a
15 couple days or a week and then we'd go into the second phase,
16 which could take one to three days and then whatever time it
17 takes to deliberate where you would be sequestered and you
18 wouldn't be able to leave. So it could take maybe four weeks
19 of your time or up to five weeks of your time. Would you be
20 able to spare it with your wedding?

21 A I mean, yeah, I could, but --

22 Q Let me ask you about your jobs. Do you get paid if
23 you're here on jury duty?

1 A No.

2 Q So would that be an economic hardship on you?

3 A Yeah. Because I have a lot of things that I'm
4 trying to get done before.

5 Q Okay. I take it you couldn't afford to lose your
6 income from two different jobs for the next month or so;
7 right?

8 A Huh-uh.

9 Q Okay. And that would create a real hardship on you
10 with your wedding coming up and everything?

11 A Yeah.

12 Q Okay. And I know you live with your parents?

13 A Yeah.

14 Q You also indicated your uncle has a problem with
15 depression?

16 A Uh-huh.

17 Q And do you think that would affect, do you spend a
18 lot of time with him?

19 A Yeah. He's over our house like every day so
20 whenever I'm like getting ready in-between jobs, I see him
21 and stuff.

22 Q Do you think that would cause additional stress on
23 you having to sit here in this most serious of criminal cases

1 so it would affect your ability to concentrate while you're
2 here?

3 A Well, from the things that he's been saying, yeah.
4 I mean we don't know what's gonna happen with him.

5 Q Also, as far as the death penalty, the death penalty
6 is a possibility in this case; okay? If the defendant gets
7 convicted of aggravated murder with one or more of the
8 specifications of aggravating circumstances, you read about
9 it in this handout downstairs?

10 A Uh-huh.

11 Q Did that make sense, or do you have some questions
12 about it?

13 A No. It made sense.

14 Q Okay. Well, if she's convicted beyond a reasonable
15 doubt of aggravated murder and one or more of these
16 specifications, she would become eligible for the death
17 penalty as a punishment and we'd then move into the second
18 phase. And in that second phase, the jury could return the
19 death penalty verdict. Now we've had folks come up here with
20 different types of views on the death penalty as a
21 punishment. Some people --

22 THE COURT: Mr. Bailey, would you
23 approach, please?

1 (Whereupon, a conference was held at the bench.)

2 THE COURT: For the record, no objection
3 to dismissing for cause?

4 MR. BAILEY: I have no objection for
5 dismissing for cause, Your Honor. Economic hardship.

6 THE COURT: No objections by either side?

7 MR. JUHASZ: We have none either, Your
8 Honor.

9 THE COURT: This is a bad time for us to
10 ask you to be here. It's a happy time for you, and we don't
11 want to ruin that; okay? You're excused. Wish you the best.
12 Okay?

13 KRISTINA M. HOLMES: All right. Thanks.

14 THE COURT: Thank you very much for
15 participating.

16 KRISTINA M. HOLMES: Thank you.

17 MR. BAILEY: Take care. Thanks very
18 much.

19 THE COURT: I received a phone call from
20 John M. Brdek, Jr., Juror Number 334. Pursuant to what
21 appears on the record, he advised that he will not be
22 participating in the trial and he's dismissed for cause.

23 * * *

1

PROSPECTIVE JUROR LISA R. MASSARY,

2

BY THE COURT:

3

Q Good morning, ma'am.

4

A Hi.

5

Q Do you still have your appointment for May 22d?

6

A Yes.

7

Q At 4. Okay. You read the handout that was given to
8 you?

9

A Uh-huh.

10

Q You have a pretty good idea of what's going on, but
11 we'll go into a little bit more detail.

12

This case basically deals with two aggravated murder
13 counts against Donna Roberts with specifications. Under the
14 law of Ohio, just because a person commits murder does not
15 mean that they automatically face the death penalty. The
16 death penalty arises when there are specifications, those are
17 things contained in the statute that covers aggravated
18 murder, if those are attached. Now, what the specifications
19 do is say that there were aggravating circumstances and
20 should raise it to the level of the death penalty. Just
21 because a person kills someone in Ohio does not mean, as I
22 said, that the death penalty arises. But when there is a, an
23 indictment that has, for aggravated murder that has

1 specifications attached, that means that if the State is able
2 to carry the burden of proof of showing each and every
3 element of the aggravated murder and the accompanying
4 specifications, then the jury is called upon to consider
5 imposing the death penalty or one of three alternatives. And
6 that is life without chance of parole, life without any
7 chance of parole before 25 or 30 years.

8 Now, we have no way of knowing what the decision of
9 this jury is going to be, of course. They won't, we won't
10 know that until the evidence has been presented, they've
11 heard the instruction of law and they make their decision.
12 If the State of Ohio fails to carry their burden of proof,
13 then this jury would properly return a verdict of not guilty.
14 If, however, the State proves everything necessary beyond a
15 reasonable doubt, then this jury may be called upon to
16 consider and perhaps to impose the death penalty or some
17 lesser sentence. We can't very well wait until we get to
18 that second phase if that does arise because we may have
19 somebody on that jury that believes that if somebody takes a
20 life, they should forfeit their life, an eye for an eye.
21 That isn't the law in Ohio. Such person could not be fair to
22 the defendant.

23 Likewise, a person who could, under no

1 circumstances, put themselves in a position of having to make
2 that decision, then that person could not be fair to the
3 State of Ohio because the State has the right to ask for the
4 death penalty if they prove their case.

5 The defendant has a right in that second phase for
6 every member of this jury to weigh the aggravating
7 circumstances against the mitigating factors. Aggravating
8 circumstances are reasons the State would put before the jury
9 as to why they should impose the death penalty. The
10 mitigating factors would be reasons put to the jury to show
11 them that in this particular case why they should not impose
12 the death penalty. And again, the State has to prove that
13 beyond a reasonable doubt. The burden is always upon the
14 State. They -- the State alone wins or loses its case. The
15 defendant may participate, the defendant may offer witnesses
16 or whatever, but there's no need to. And if the defendant
17 chooses the option of doing nothing throughout the trial, the
18 jury can't look upon that with any eye of suspicion because
19 it isn't the defendant's job here or duty to present
20 anything. It's the State's job to do that.

21 The other issue will be regarding pretrial
22 publicity. Have you read or do you think you know something
23 about the case that might cause you difficulty in listening

1 to the evidence and following what the evidence proves. For
2 the case to be fairly tried, this jury will have to set aside
3 anything that they may have heard about the case and decide
4 the matter strictly on the evidence that they hear in this
5 courtroom. Okay?

6 A Yes.

7 THE COURT: Very good. Gentlemen.

8 **EXAMINATION BY MR. BAILEY:**

9 Q Morning, Mrs. -- is it Massary?

10 A Uh-huh.

11 Q My name is Ken Bailey. You saw me about I guess
12 it's been five weeks over in the other courtroom and I
13 promised you at that time that next time you saw me I would
14 be joined by my co-counsel, Chris Becker, and there he is.

15 A Hi.

16 Q And the two of us are assistant prosecutors with the
17 Trumbull County Prosecutor's Office and we're responsible for
18 prosecuting this case on behalf of the people of Trumbull
19 County and the State of Ohio. And as the Judge indicated,
20 we're going to be asking you some questions about some
21 different things this morning. And the reason we ask these
22 questions about your opinions on different things and your
23 prior experiences isn't because we're snoopy and we like to

1 pry into peoples' backgrounds, but rather to make sure that
2 the folks who are selected to sit on this particular jury can
3 be fair and impartial to both sides, both to the defendant
4 and to the people of the State of Ohio; okay?

5 A Okay.

6 Q And there aren't any right answers, there aren't any
7 wrong answers to these questions. Only open and candid
8 answers. If you have any questions that come up during the
9 course of these proceedings, then feel free to ask them at
10 this point and we'll see if we can get you an answer. We're,
11 we are not allowed to have any communication with you after
12 we're done today in court, okay, until this entire case is
13 over. If it goes into two phases, we have to wait until the
14 end of the second phase before we're allowed to talk to you.
15 If we run into each other in the hallway, in the elevator, at
16 a restaurant, we're only allowed to say maybe good morning or
17 good afternoon. If we said anymore, it could result in a
18 mistrial. We don't want to do it all over again. Okay? And
19 we just want you to know what our rules of conduct are so
20 that you don't think we're snubbing you or trying to be
21 antisocial or anything like that in case we do run into each
22 other.

23 A Okay.

1 Q Okay? Now, this morning, I am going to be asking
2 you some questions. I'm gonna ask you about pretrial
3 publicity, I'm going to ask you about the death penalty as a
4 punishment as it pertains to the case and your views on it
5 and then I am going to ask you some regular questions.

6 Let me -- before I do that, let me ask you about
7 your doctor's appointment. You said you had one scheduled
8 May 22d at about 4:00?

9 A That's correct.

10 Q Okay. This is the 12th so that would be next
11 Thursday I believe; right?

12 A (Nods head.)

13 Q Any chance you can get that moved?

14 A I can try. Like moved to?

15 Q Do they do it on a Saturday or?

16 A I don't think his office is open on a Saturday, but
17 I got it at 4:00.

18 Q Well, we can, I'm sure that if you're selected to
19 serve here, we'd be able to let you out.

20 A Yeah. I think one day they're open to 7 so I could
21 also try to get it moved.

22 Q Oh, okay. That would work out.

23 A Okay.

1 Q But we'd probably be able to work around that.

2 A Okay.

3 Q Let's talk about this pretrial publicity. The first
4 time, let's see, looking at your questionnaire, I understand
5 you get the Tribune occasionally on Sundays and you watch the
6 local news a couple of times a week on channel 27; right?
7 And in your questionnaire, you indicated you had no knowledge
8 of this particular case when you filled it out?

9 A That's correct.

10 Q Okay. Have you heard, do you recollect having heard
11 anything about this case?

12 A No.

13 Q Okay. Now, let me tell you, the defendant has been
14 charged with a couple counts of aggravated murder with
15 specifications and aggravated burglary and aggravated robbery
16 and firearm specifications. And the charge is that she
17 planned with another person by the name of Nate Jackson to
18 kill her ex-husband with whom she was living for insurance
19 money and that the actual killing and the trespass into the
20 victim's house and the theft of the car was done by this Nate
21 Jackson. Okay. Does that ring a bell in any way?

22 A No.

23 Q Okay. The reason the Judge admonishes the jurors

1 not to read the paper or listen to the news is because as you
2 look around the courtroom now, there is nobody here from the
3 news media; okay? But it may well be that as the trial
4 progresses, as we get into testimony, you'll see reporters
5 come in and sit down for a few minutes, maybe for half an
6 hour or so. You'll see the TV folks come in and set up their
7 cameras. They can't film the jury, but they can film the
8 other participants and then they'll do a feature on the
9 trial. But the thing is, they'll have missed all the
10 questions that were asked and answered before they got in
11 here and everything that was asked and answered once they
12 leave here. Okay? So their coverage is going to be taken
13 out of context from the course of the trial. And in fact,
14 what might be in the paper or on TV might actually be the
15 reverse of the total impact of the testimony. Okay? And
16 they don't deliberately mislead people as to what happened.
17 It's just because of the nature of the beast. They have to
18 rush in to print and they miss everything else that happens.
19 So if you sat on this jury, you might say, have somebody save
20 the papers for you and then read them when the trial is all
21 over. You might say to yourself, "Gosh, I sat in Judge
22 Stuard's court for the entire case and whoever wrote this
23 article must have been sitting in Judge Logan's court on a

1 different case."

2 Okay? So it's because of that potential or error
3 and distortion that you're asked not to read the papers or
4 ignore the TV programs or coverage of the case and not
5 discuss it with anybody. You wouldn't have any problem doing
6 that?

7 A No.

8 Q Okay. So much for pretrial publicity.

9 Now let's talk about the death penalty as a
10 punishment here and your views on that. The first time you
11 learned this was a potential death penalty case was when?

12 A When I was here.

13 Q Back on April 8th?

14 A The 8th, yeah.

15 Q Okay. And before that, have you ever had occasion
16 to discuss or have conversations with any family members or
17 friends or some organization concerning your view on the
18 death penalty, maybe back in school, you know, when cases
19 came up in the news or at work?

20 A I would imagine, yes.

21 Q Okay. And do you remember what position you would
22 have taken?

23 A Yeah. I probably would say that it would just

1 depend on the evidence and what happened during the course
2 of, you know, the trial to get 'em to that point I guess.

3 Q Okay. Looking at your questionnaire, it seems like
4 you favor the death penalty for murder cases?

5 A Yes.

6 Q And you believe it has a deterrent affect on other
7 people from committing murders?

8 A Yes.

9 Q Okay. You understand that in Ohio -- well, let me
10 ask you. Your ex-husband is a, is he still a corrections
11 officer with the Sheriff's Office?

12 A Yes.

13 Q What's his name?

14 A Dominic Massary.

15 Q Okay. Did you ever have a chance to talk to him
16 over the years about the death penalty as a punishment?

17 A No.

18 Q Did it ever come up?

19 A No.

20 Q The law in Ohio, the criminal law is written by the
21 state legislature. We elect the folks down in Columbus and
22 they pass the laws and they write out what's prohibited and
23 what the range of punishments would be. And every killing in

1 the law isn't treated equally; okay? The way the law is
2 written, I imagine that if somebody were out chopping wood
3 and the head of the ax or the ax head flew off the handle and
4 killed somebody, that would be an accident, wouldn't it?

5 A Yes.

6 Q You wouldn't expect anybody to be punished for
7 something like that?

8 A No.

9 Q And if somebody were driving down the road too fast
10 and went through a stop sign and killed a pedestrian, you'd
11 expect there would be some type of punishment of jail or
12 prison sentence, but not the death penalty; right?

13 A Right.

14 Q Okay. If two fellows were drunk and they were
15 fighting in a bar and one fellow hit the other and the victim
16 flew backwards, hit the back of his head on the edge of the
17 bar and died as a result of that, that might be some type of
18 manslaughter case perhaps. You would expect maybe a prison
19 sentence, but not the death penalty; right?

20 A Right.

21 Q And if somebody, there are different types of cases
22 where somebody could kill somebody with prior calculation and
23 design. In the old days, we used to talk about premeditated

1 murder, but they changed the law a number of years ago and
2 now we have a law dealing with prior calculation and design.
3 It's where basically somebody plans a killing in advance.
4 And it may be for different reasons. It could be a murder
5 for profit, a murder for hire, it could be, there a lot of
6 different things it could be under the law. But let's say
7 somebody plans to kill another person. Let's say I'm upset
8 with my co-counsel's shoes. I say, "I hate those shoes.
9 Chris, if you wear those shoes tomorrow, I'm gonna blow you
10 away when you come up the courthouse steps."

11 And I stand out in front of the courthouse and tell
12 everybody, I announce to the whole world, "If my co-counsel
13 wears those shoes tomorrow, the same shoes, I'm gonna blow
14 him away with a .357."

15 And he walks up the steps tomorrow morning wearing
16 those shoes and I blow him away with a .357, okay, that would
17 be a killing with prior calculation and design. But under
18 Ohio law, that's not punishable by the potential penalty of
19 the death penalty. It's not a potential punishment just for
20 that the way the legislature has written the law. Okay.

21 To make a person eligible for the death penalty,
22 there has to be something else. Like the Judge mentioned,
23 there has to be a specification of an aggravating

1 circumstance. And the legislature has written the law in
2 such a way that that can include maybe killing a specified
3 person like a police officer or the governor or lieutenant
4 governor or the president of the United States or it could be
5 the killing of a young child or certain type of felony murder
6 where it's committed during the course of an aggravated
7 burglary or kidnapping or a rape or an aggravated robbery or
8 a mass murder which involves the killing or attempted killing
9 of two or more people. Okay? And there are a number of
10 other things that are in there too. And that would make a
11 person eligible for the death penalty as punishment.

12 Let me ask you -- that's the way the legislature has
13 written the law now. If you had some say in designing the
14 criminal justice system, if you sat as a legislator down in
15 Columbus, would you include the death penalty for certain
16 killings?

17 A Yes.

18 Q What type?

19 A Well, I would say the types that were premeditated,
20 but they had, like you said, an aggravating circumstance to
21 that. You know. If they raped them or robbed them in the
22 process or whatever. I would say that would be.

23 Q Okay. In your belief in the death penalty being

1 appropriate for some types of cases, would you include it for
2 anything other than murder?

3 A No.

4 Q Okay. Your belief that the death penalty might be
5 appropriate for certain types of killings, is it based on
6 personal, moral, ethical or religious belief or some
7 combination of factors?

8 A Just probably personal and moral and a little bit,
9 I'd say, religious belief.

10 Q How is it? Can you explain that?

11 A Well --

12 Q You -- because I understand you're a Pentecostal
13 Christian?

14 A That's correct.

15 Q Anything in your religion, I mean does it talk about
16 certain beliefs in the death penalty?

17 A No. Just in the bible, it states the eye for an eye
18 thing, but I think you have to take that a little farther
19 with what the circumstances are.

20 Q Okay. Can you explain that?

21 A What do you mean?

22 Q How you mean that.

23 A Well, in the bible it's, you know, God says that if

1 you kill somebody then you should be judged in the same
2 manner. But I think that if that would hold true, that would
3 mean that somebody that hit somebody with a car would also
4 have to be put to death, which I don't think is right. So I
5 think it would have to depend on the circumstances
6 surrounding the case.

7 Q Okay. And that's what they've done in Ohio law,
8 because you understand for somebody convicted of aggravated
9 murder with specifications, it's not an automatic death
10 penalty because in the first phase of the trial, you know,
11 the first phase is tried just like any other criminal trial
12 in Ohio. You got to make your decision as to whether the
13 defendant is guilty beyond a reasonable doubt of the crime of
14 aggravated murder and one or more of these specifications of
15 special circumstances before you go into a second phase. And
16 in that first phase, punishment isn't relevant. So nothing,
17 you'd probably hear nothing about this issue of what the
18 appropriate punishment is; right?

19 A Correct.

20 Q So the first phase just deals with guilt or
21 non-guilt.

22 Now, if you find that we meet the burden of proving
23 the elements of the crimes, the essential component parts of

1 the crimes, beyond a reasonable doubt, then we go into a
2 second phase. And in the second phase, the issue is
3 different from the first phase. You've already decided guilt
4 so guilt is no longer an issue. Okay? Because you've been
5 convinced beyond a reasonable doubt that the defendant is
6 guilty of aggravated murder and one of more of these
7 specifications.

8 In the second phase here, the issue is what's the
9 appropriate punishment for this defendant for this crime.
10 And the way that the Ohio law is written, you got to do a
11 balancing test. In a second phase, you can hear the same
12 evidence over again. The State generally says something to
13 the effect that, "We move to admit all the testimony and
14 evidence that's relevant to the aggravating circumstances
15 from the first phase into the second phase," or something
16 like that. Okay? And then you could hear new evidence.

17 The defense has an opportunity to present what we
18 call mitigating factors. Mitigating factors, basically it's
19 a fancy word that means something that's in favor of a
20 defendant and works against the imposition of the death
21 penalty as a punishment. Okay? We don't know what they are
22 at this time because it's not relevant now. But it could be
23 like the two guys fightin' in a bar. They're both drunk or

1 something. But who knows. Okay? And you have to be able to
2 consider those things. You got to be able to consider the
3 aggravating circumstances and the mitigating factors to sit
4 on this case.

5 Now, how much these things weigh when you put 'em on
6 a scale, that's entirely up to you and the other jurors. You
7 might decide something weighs a whole lot. It may weigh like
8 20 pounds or a ton. And something else, on the other hand,
9 may weigh maybe like about as much as a feather; right? But
10 you got to be able to consider it and determine how much
11 weight to give it to sit on this jury because the death
12 penalty is not an automatic punishment.

13 Now, in the second phase, the State's burden of
14 proof is to prove beyond a reasonable doubt that the
15 aggravating circumstance or circumstances, which you would
16 have found from the first phase of the trial on one side of
17 the scale, we have to show that that outweighs beyond a
18 reasonable doubt whatever these mitigating factors are. And
19 you have to be able to consider four possible punishments to
20 sit on this jury. You got to consider them equally when you
21 start out. There's the death penalty, there's life in prison
22 without possibility of parole, there's life in prison with
23 parole eligibility after 30 full years and life imprisonment

1 with parole eligibility after 25 full years. And under our
2 system, you got to be able to consider those at the beginning
3 equally. Okay?

4 If we meet our burden of proof of proving that the
5 aggravating circumstance or circumstances outweigh these
6 mitigating factors beyond a reasonable doubt, then the
7 appropriate penalty is the death penalty. And at that point,
8 you stop your deliberations if we meet that burden and you
9 return that verdict. Okay?

10 If we don't meet our burden of proof, if you and the
11 other eleven jurors say, "Hey, the prosecutor didn't prove
12 that the aggravating circumstance or circumstances outweigh
13 the mitigating factors beyond a reasonable doubt," then you
14 forget the death penalty and you go down to the other three
15 life sentences and consider which of those is the most
16 appropriate for this defendant for this case. Okay?

17 Do you think you would be able to do that?

18 A Yes.

19 Q Okay. If we meet our burden of proof in the first
20 phase and we establish to your satisfaction that the
21 defendant's guilty of the elements of the crime charged for
22 aggravated murder and one or more of these specifications
23 beyond a reasonable doubt, can you sign the verdict form for

1 guilty knowing that if you do she'd become eligible for the
2 death penalty in the second phase?

3 A Yes.

4 Q Okay. Now let's say we get to the second phase and
5 we convince you and the other eleven jurors beyond a
6 reasonable doubt that the aggravating circumstance or
7 circumstances outweigh the mitigating factors beyond a
8 reasonable doubt. Would you be able to sign a verdict form
9 for the imposition of the death penalty?

10 A Yes.

11 Q And if you did that and the Judge asked you in open
12 court, "Is this your verdict," would you be able to say,
13 "Yes, it's my verdict"?

14 A Yes.

15 Q Okay. Now your view on the death penalty being
16 appropriate, you've held that view for about how long?

17 A Oh, I don't know. Twenty years.

18 Q Okay. And has the, your strength in that belief,
19 has it stayed about the same or has it increased or
20 decreased?

21 A I'd say the same.

22 Q Okay. So much for the death penalty as a possible
23 punishment.

1 Now let's get into some regular questions here.

2 Now, the defendant here is charged with planning with another
3 person, this Nate Jackson, and she's not charged as the
4 trigger person, but rather as a complicitor, a complicitor
5 being someone who solicits or procures or aides and abets
6 another person, encourages, strengthens, helps or plans with
7 another person in the commission of the offense. And under
8 Ohio law, she can become eligible for the death penalty if we
9 prove that she planned or she was a complicitor in these
10 crimes if we establish all the elements beyond a reasonable
11 doubt. Okay? She'd become eligible for the death penalty.

12 Is there anything about the fact that she's not
13 charged as the trigger person, but rather as somebody who
14 planned with prior calculation and design the killing of
15 another person that would affect your ability to return a
16 verdict?

17 A No.

18 Q Okay. Now, there are two charges here of aggravated
19 murder. There's only one person that's been killed, but
20 there are two separate charges because under Ohio law, the
21 State is allowed to pursue two separate theories and have
22 both of these theories go to the jury for their
23 consideration. And the way these are charged, there's a

1 charge of aggravated murder with prior calculation and design
2 and there's a second charge of aggravated murder that the
3 purposeful killing of another person was done in the course
4 of a special felony, during the course of an aggravated
5 burglary and/or an aggravated robbery. Okay?

6 And there are these specifications that we
7 mentioned. And basically specifications attached to both
8 counts of aggravated murder. The specifications, there are
9 two of those, and the first one is a specification of an
10 aggravated burglary, that the aggravated murder occurred
11 during an aggravated burglary and that the defendant
12 committed the aggravated murder with prior calculation and
13 design.

14 And the second specification is that the aggravated
15 murder was committed during an aggravated robbery, as opposed
16 to an aggravated burglary, and that the defendant committed
17 the aggravated murder with prior calculation and design.
18 Okay?

19 Each of these crimes is composed of certain
20 elements. Oh, there are two more crimes. There's a charge
21 of aggravated burglary and aggravated robbery. The defendant
22 is charged as a complicitor in these. And let me give you
23 the distinction here. Most folks, unless they're trained in

1 the law, interchange those terms, robbery and burglary. And
2 people sometimes say, "Gosh, my house got robbed," and they
3 really mean it got burglaried.

4 Basically when we talk about an aggravated burglary,
5 we're talking about somebody trespassing in an occupied
6 structure, in somebody else's home, and the person goes in
7 with the intent to commit some type of offense. It could be
8 an aggravated murder or a theft offense inside that residence
9 and somebody is there and the perpetrator is armed with a
10 deadly weapon like a knife or a gun and the perpetrator
11 inflicts serious physical harm or death on the victim inside.
12 Okay?

13 On the other hand, there's a charge of aggravated
14 robbery. Aggravated robbery doesn't involve any type of
15 structure. No dwelling, house. It's basically when the
16 perpetrator uses force or the threat of force against another
17 person to commit the offense, like to steal something, and
18 the perpetrator could be armed with a deadly weapon like a
19 knife or gun and the perpetrator inflicts serious physical
20 harm or death upon the victim; okay?

21 And attached to those particular charges are firearm
22 specifications. Just an extra finding of fact. The term
23 specification is just an extra, it's a fancy word that just

1 means an additional finding of fact for a jury to consider.
2 And there's a charge there that a working, loaded gun was
3 used where you pull the trigger and a bullet comes out
4 through the use of combustion or expulsion. There's a fancy,
5 well, there's a technical legal definition that the Judge
6 will give you, but basically it means a working gun. Okay?

7 And the Judge is gonna define all these terms for
8 you. Everything has got a definition pretty much and he'll
9 give you the legal definition of all these particular terms
10 at the end of the case and you're bound to follow that
11 instruction. Okay.

12 Now, this concept of elements, each crime is
13 composed of certain elements. It's like, did your mom ever
14 bake a cake?

15 A Yeah.

16 Q Chocolate cake? Do you like chocolate cake?

17 A Uh-huh.

18 Q Okay. Me too. And when your mom baked a chocolate
19 cake, she used certain key ingredients and she had to put all
20 those ingredients in for each, each cake she made had
21 different ingredients; right? If it's a chocolate cake,
22 she's got to have the chocolate. If she leaves it out, you
23 might end up with a cake, but it's not gonna be a chocolate

1 cake; right?

2 A Right.

3 Q Same thing with these crimes. We got to bake a
4 whole lot of cakes; okay? And you got to consider each cake
5 or crime separately. We put in different ingredients. If we
6 leave out an ingredient, you got to find the defendant not
7 guilty of that particular crime. We have to establish these
8 ingredients or elements by proof beyond a reasonable doubt
9 basically so that you're firmly convinced of the truth of the
10 charge to a moral certainty using your reason and your common
11 sense. It's a test you use every day. If you raise a child,
12 you use a lot of reason and common sense and you want to make
13 sure that it's the right thing to do; right?

14 A Right.

15 Q Now, I'm gonna give you a for instance of these
16 elements. Now, let's take the crime of aggravated murder
17 with prior calculation and design. And the Judge, you're
18 bound by the Judge's instructions, but let's say that we have
19 to establish first the crime happened on or about a certain
20 date. Let's say December 11 of 2001.

21 Second, that it happened here in Trumbull County,
22 Ohio. The legal term for that is venue. And quite simply,
23 we have to ask that question, what county and state did this

1 occur so we can try this case in this courthouse rather than
2 up in Ashtabula or down in Tuscarawas County.

3 Third is identification. Somebody is gonna have to
4 come in and point out the defendant as the person involved
5 here.

6 Fourth, that she acted purposely. Basically on
7 purpose, but the Judge will give you a detailed definition of
8 purpose.

9 Fifth, did she cause the death of a living person?
10 In this case, a fellow by the name of Robert Fingerhut.

11 And sixth, that she acted with prior calculation and
12 design. Now this term, prior calculation and design,
13 requires some advanced planning and a studied scheme to kill.

14 And let me give you a for instance of that. Let's
15 say I take my pen and I drop it and I catch it. That might
16 be a reflex, no planning involved.

17 But let's say I drop my pen and I say, "Oh my
18 goodness. I dropped my pen. Maybe I better bend down and
19 pick it up."

20 Okay? That's some advanced planning; right?

21 Now, let's say yesterday I'm talking to Chris, who's
22 not here now, he keeps disappearing on me now.

23 MR. INGRAM: He went to retrieve a

1 document.

2 A He's scared of you.

3 MR. BAILEY: That's good.

4 Q (By Mr. Bailey) And let's say I told Chris
5 yesterday, I said, "I need an example of prior calculation
6 and design. So I'm gonna come to court and I'm gonna drop my
7 pen so I can use that as an example."

8 When I pick it up and I planned it in advance, that
9 would be prior calculation and design. Okay?

10 A (Nods head.)

11 Q Because it was a studied scheme to drop my pen so I
12 could pick it up and I use it as an example. Okay?

13 Now, the burden of proving these particular elements
14 is on us, the people of the State, and we've got to do that
15 beyond a reasonable doubt. And if we don't meet this burden,
16 then you have to find the defendant not guilty of that
17 charge. Okay? You may say, "Gosh, they put on a whole lot
18 of evidence and I suspect the defendant did it, but they left
19 out venue. The prosecutor never asked what county or state
20 it occurred in."

21 Okay? So even though you may say, "I think the
22 defendant did it, this prosecutor didn't meet his burden of
23 proof," so you got to find the defendant not guilty. Okay?

1 You'd be able to do that?

2 A Yes.

3 Q Okay. You understand that the burden of proof is on
4 us, the people of the State?

5 A Uh-huh.

6 Q It never shifts. The defendant has no burden of
7 proof. The defense team there, they can sit on their hands
8 during this trial. They don't have to ask any questions
9 under the law because we've got this burden of proof.
10 They're not gonna do that. They're excellent attorneys.
11 They're highly skilled, but they could sit there and work
12 word jumbles or something like that. Okay? Because the
13 burden is entirely on us. The defendant doesn't have to do
14 anything in the course of the case.

15 And there's a reason for that. There's a
16 presumption of innocence under our American system of
17 justice. Other countries don't have this presumption of
18 innocence. Not all countries. If you lived in France or you
19 lived in Turkey, there's a presumption of guilt basically.
20 And -- but that's not our system. Okay? And this
21 presumption of innocence, this defendant is presumed to be
22 innocent, as are all other defendants tried in this
23 courtroom. And the presumption of innocence acts like a

1 cloak shielding this defendant all through the course of the
2 trial unless and until the State's able to put on enough
3 testimony and evidence to convince you of the truth of the
4 elements of the crime charged beyond a reasonable doubt.

5 Okay? That stays with her all the way through the course of
6 the trial until you're back in the jury room deliberating
7 with the other jurors. And if you find that we've proved
8 these elements of the crime beyond a reasonable doubt, at
9 that point, you'd be able to return a guilty verdict and that
10 presumption of innocence would be gone. Okay? And you
11 believe in the presumption of innocence; right?

12 A Yes.

13 Q It's important in our system of justice?

14 A Uh-huh.

15 Q Now, we use this term proof beyond a reasonable
16 doubt. And the Judge is gonna give you a detailed definition
17 of that term. But like I said, it's a common sense term
18 basically. It's based on use of your reason and common sense
19 in determining if you're firmly convinced of the truth of the
20 charge, in this case the elements of the crime, to a moral
21 certainty. Okay?

22 That fancy language, it's just stuff you've dealt
23 with every day. You've bought a house before?

1 A Actually, I am in the process of buying a house.

2 Q Oh, good. And you've taken on a job; right?

3 A (Nods head.)

4 Q You decided to get married, you decided to get
5 divorced; right?

6 A Uh-huh.

7 Q You decided to have a child?

8 A Uh-huh.

9 Q Okay. And these, if your kid is sick while you're
10 raising them, you decide whether or not to take 'em to the
11 doctor; right? You use your reason and common sense?

12 A Uh-huh.

13 Q You list the pros, you list the cons. Just like
14 buying the house. Okay. You want to make sure that it's the
15 right house for you. Some houses might be too expensive,
16 there may be structural problems, water damage. There are
17 all kinds of things you look at in the house. Is it in the
18 right neighborhood, the location, is it close to the school,
19 are there sidewalks nearby or is there a septic system versus
20 city water. A lot of things to consider; right?

21 A Uh-huh.

22 Q So you list your pros and your cons. You look at
23 the interest rates, see if you can get a decent rate, and

1 this is a good time to buy, and at some point you're probably
2 going to make a decision, aren't you?

3 A Uh-huh.

4 Q I know when I went out, we looked at a lot of
5 houses, saw everything where we live in that area and knew
6 what was on the market and everything, what the rates were.
7 But if you have questions, reasonable doubt, you don't buy
8 it. But if you've satisfied every reasonable doubt and
9 you're firmly convinced it's the right thing to do, then you
10 go ahead and make your decision and you buy it; right?

11 A Correct.

12 Q Okay. That's the same test you use here. It's one
13 of the most important decisions you're gonna make in your
14 lifetime. Major investment, whether you buy a house or not;
15 right?

16 A Uh-huh.

17 Q And it's that same reason and common sense that you
18 apply to this particular case that you use in your daily
19 life. And it's sort of like, I'm gonna steal John Juhasz's
20 box, his imaginary box, that he uses as an example. I like
21 this box. And in a civil case where somebody sues for money
22 damages, like in a car accident or something, whoever fills
23 that box over half way with evidence is gonna prevail in that

1 case. Okay? And it's like a scale. So whoever tips the
2 scale just a little bit is gonna win.

3 But in a criminal case, our burden is a whole lot
4 bigger, it's a lot higher. We got to fill that box pretty
5 close to the top. Not all the way to the top because under
6 our system of justice, nothing could ever be proved a hundred
7 percent. There's always some room in there for some possible
8 or imaginary doubt; right? So the law puts the burden on us,
9 the people of the State, to fill the box with evidence beyond
10 a reasonable doubt, which is fairly close to the top. You
11 and each of the other eleven jurors can draw your own
12 imaginary line on that box. It might be an inch away from
13 the top or a half an inch or something, wherever you're
14 comfortable with it. Okay. And we have to fill that box
15 with evidence to convince you of the elements of the crimes
16 charged. And if we do, then we've met our burden of proving
17 the case beyond a reasonable doubt.

18 Now you understand the defendant doesn't have any
19 burden. Okay? She doesn't have to put anything into the box
20 or take anything out of the box because of the presumption of
21 innocence and the burden of proof. We're the only ones who
22 have to do anything, the people of the State, but you
23 wouldn't force the defendant to do anything, would you?

1 A No.

2 Q Okay. Now, the standard of proof beyond a
3 reasonable doubt, sometimes folks watch TV programs like,
4 what were the old ones, L.A. Law and Perry Mason, and they
5 used, and there was an Alfred Hitchcock movie, *Shadow of a*
6 *Doubt*, and folks, they use terms like, oh, we have to prove
7 it beyond all doubt or beyond any doubt or beyond the shadow
8 of a doubt. Well, that's not the law. You understand it's
9 just proof beyond a reasonable doubt? That shadow of a
10 doubt, there's no such animal in real life. It makes for a
11 good Alfred Hitchcock movie title, but that's all it is.
12 It's a movie title. Okay. You wouldn't force us to a higher
13 burden of proof than what the Judge instructs; right?

14 A No.

15 Q And you understand this burden of proof is the same
16 in all criminal cases, whether it's a shoplifting case or a
17 burglary or a robbery or an aggravated murder case like this?

18 A Uh-huh.

19 Q Okay. Now, there are different types of evidence
20 that we can use to fill this box. We can use direct evidence
21 where a witness comes in and testifies to the, what he or she
22 has used through the use of his or her five senses. Like "I
23 heard the gunshot and it was loud, I smelled the smoke and it

1 was acrid, I touched the surface and it was warm."

2 Okay? But there's another type of evidence that
3 you're used to using. It's roundabout evidence. It's where
4 you're presented with a fact or series of facts and you're
5 asked to draw a logical deduction to another fact or series
6 of facts. That's called circumstantial evidence. In those
7 TV programs, sometimes they misuse that term, but let me give
8 you a for instance.

9 Let's say you live in a two-story house and your
10 bedroom is on the second floor and before you go to bed at
11 night, you look out of your bedroom window across the
12 neighborhood and it's a beautiful night. The moon is
13 beaming, the stars are twinkling and there's just not a cloud
14 in the sky. And as far as you can see across the
15 neighborhood, it's perfectly dry. Okay? So you draw the
16 blinds, you get into bed, the radio is on low and you hear
17 the announcer say, "Folks, there's a cold front coming in
18 tonight and I expect we're gonna get a storm before morning."

19 So you turn off the radio and you fall asleep. And
20 sometime during the night, you're awakened by a distant
21 booming sound up in the sky. And you look toward the window,
22 but the blinds are drawn and you see like a flash of light
23 outside. And about three seconds later, there's a distant

1 boom. And a minute goes by and suddenly there's another
2 bright flash of light outside and about a second later
3 there's a closer boom up in the sky. Suddenly, there's this
4 really bright flash outside and right over the house there's
5 a ripping and cracking boom sound and a pitter patter on the
6 roof and a steady drumming sound and you fall back asleep.
7 Sometime later, you awaken, go to the window, open the blinds
8 and look out. The sun is shining, there's not a cloud in the
9 sky. Looks like a nice day, but as far as you can see across
10 the neighborhood, the streets are now running with water, the
11 rooftops are soaking wet, there are drops of water dripping
12 off the leaves of the trees. Okay? And you know, there is
13 no fire hydrant nearby where any car could hit it and spew
14 water all over the place. So you know what happened during
15 the night?

16 A We had a storm.

17 Q Right. There was a thunderstorm. And you know that
18 beyond any reasonable doubt using circumstantial evidence,
19 don't you?

20 A Uh-huh.

21 Q Now, there is some room in there for some possible
22 or imaginary doubt. You can imagine that E.T. and his alien
23 buddies flew by on a flying saucer during the night and put

1 on a sound and light show and sprinkled the ground with some
2 wet stuff, but that would be a foolish or imaginary doubt,
3 wouldn't it?

4 A Uh-huh.

5 Q You know all that happened is there was a
6 thunderstorm.

7 Now, there are some limitations to circumstantial
8 evidence. If you wanted to know how much water fell during
9 the night or for how long it fell, you'd probably have to go
10 to the weather station out at the airport or something to
11 look at their measuring devices. But you would know, to
12 determine what happened during the night, you'd know that
13 beyond any reasonable doubt; right?

14 A Right.

15 Q Now there's a reason that the State is allowed to
16 use circumstantial evidence as well as direct evidence, and
17 you understand circumstantial evidence is just as good as
18 direct evidence? Okay? Are you able to pile up evidence on
19 evidence and make your own decision and follow what the Judge
20 tells you?

21 A Yes.

22 Q Now, there's a reason for it because sometimes,
23 unless somebody tells you what they're planning to do, you

1 have to look at all the circumstances and facts to determine
2 what was in a person's mind as to what the person's purpose
3 was at the time of the crime. And if you had things like
4 maybe letters or phone calls where a person expressed his
5 purpose, you'd be able to consider those types of things as
6 circumstantial evidence to know what the intent was; right?

7 A Uh-huh.

8 Q You believe that people should be held accountable
9 for their actions?

10 A Yes.

11 Q Now, criminals can engage in a lot of planning in
12 committing a crime, but you're aware that there are times
13 where criminals get caught because they do some really,
14 really stupid things, in spite of all their planning; right?

15 A Uh-huh.

16 Q For example, you're aware of the cases where the
17 bank robber goes in and he's got a getaway driver or he's
18 wearing a mask and he's got a gun and he goes up to the
19 teller and he hands a note on the back of an envelope to the
20 teller that says, "Give me all your money," and the teller
21 hands over the money and the guy takes the money and runs
22 leaving the note behind. And when the teller turns the note
23 over, there is the perpetrator's name and address on the

1 front; right?

2 Or the case where the burglar climbs into the house
3 through a window and drops his wallet with all his
4 identification and leaves it behind at the scene and gets
5 caught because the cops go to the house and catch him with
6 all the loot and everything; right?

7 So you understand that in spite of all the, all the
8 detailed planning some criminals do, sometimes they slip up
9 because they do some stupid things?

10 A Uh-huh.

11 Q And they get caught.

12 Couple other things. You can't take notes while
13 you're in court. Okay? You ever watch Court TV?

14 A Sometimes.

15 Q Okay. Well, they have cases from different parts of
16 the country and each state has different rules and
17 procedures. And sometimes in the other jurisdictions, some
18 of the judges let some of the jurors take notes. We don't do
19 that here in Ohio. Generally our judges feel it would
20 distract the jurors' attention from observing the witness's
21 demeanor. They want you to hear what's being said and how
22 it's being said. And some folks take better notes than
23 others. It's like being back in college. And then people

1 may argue over their notes. So they want you to rely on your
2 collective recollections without taking notes. You'd be able
3 to do that?

4 A Uh-huh.

5 Q You don't -- you're gonna have to remember the
6 testimony. We're probably gonna go for three weeks with
7 three and a half days a week because of the Court's schedule.
8 And there aren't going to be any instant replays of the
9 testimony. That's why you're gonna have, it's not like with
10 the sports things on TV where they have the instant replays.

11 Also, there won't be any instant transcripts of the
12 testimony of the witnesses. Sometimes folks ask for
13 transcripts of the testimony of the witnesses. That's not
14 gonna happen. Our court reporter are excellent, but they
15 can't, we don't have the million dollars worth of recording
16 and transcribing equipment that they do in the O.J. Simpson
17 case and the Menendez brothers cases and some of the other
18 big cases where the TV people are there and they got 50
19 million transcribing devices and stuff. So you're not gonna
20 have instant transcripts; okay?

21 A Okay.

22 Q You've got to rely on your collective recollection,
23 all twelve of you.

1 A Okay.

2 Q You can't go out to investigate on your own. We had
3 a juror do that once and they do that sometimes on TV
4 programs, I think one of the Hawaii 5-0 episodes and one of
5 the Matlock episodes. That's a no no. That would cause a
6 mistrial, and we don't want do it over again. You're not
7 gonna do that; right?

8 A No.

9 Q You're being selected for the position of an
10 alternate. Sometimes folks say, "Well, I'm an alternate.
11 It's sort of like being a fifth wheel."

12 Well, that's not true because we've tried quite a
13 few capital cases over the years and we try to get four
14 alternates and say, well, gosh, that's a lot of people to be
15 alternates, but we've had a number of cases where because of
16 family emergencies or illnesses, sometimes you hit flu season
17 or something happens, hopefully nothing happens, but we've
18 had cases where all four alternates have been installed to
19 replace regular jurors; okay? And so it's very important
20 that you pay very close attention just as if you were sitting
21 in one of those twelve seats; okay?

22 A (Nods head.)

23 Q That wouldn't bother you; right?

1 A No.

2 Q The fact that the defendant is a woman rather than a
3 man charged with a capital offense, does that bother you?

4 A No.

5 Q Another thing is you're stuck with the questions
6 that the lawyers ask. On Court TV, sometimes they have cases
7 from different jurisdictions where they, the jurors can
8 submit questions to the judge to ask the witnesses questions.
9 You can't do that here. And because we're lawyers and
10 because we've been trained in law schools, we're geared
11 toward proving the elements or tearing down the elements.
12 Okay? That's what we tend to focus on. And there may be
13 some unanswered questions.

14 Shoes. If you had an interest in shoes. Let's say
15 you sold shoes. Like my wife, who has 50 pairs of shoes.
16 Okay? She might be interested in shoes if she were a juror.
17 But let's say unless it was a case with footprints in the
18 snow or something like that and they were making casts of
19 them, that might not be relevant to this particular case.
20 And if we can establish those elements beyond a reasonable
21 doubt without ever getting into the area of footwear, then
22 you'd be able to return a conviction even though we never
23 asked any questions about shoes; right?

1 It's like being a chef. If you wondered what people
2 ate during the crime or something like that, that might never
3 get asked and answered; right?

4 A Yeah.

5 Q Right? There might be some questions that might
6 never get asked or answered.

7 Sequestration. At the end of the first phase, and
8 again, when all the testimony is in and the evidence and the
9 Judge instructs you on the law, you and the other jurors go
10 back out to the jury room to deliberate and you're all kept
11 together and you're not allowed to deliberate unless all
12 twelve of you are there. No one on ones or one on threes or
13 whatever. And you're not allowed to go home at night.
14 You're given advance notice so you can bring your stuff in
15 and they put you up at a local hotel. And each jury is
16 different. We've had jurors come back in the first phase in
17 anywhere from an hour and a half with a verdict up to five
18 days. Okay? So who knows how long it's going to take for
19 each jury to make a decision. But you'd be sequestered.

20 And then if you return a conviction in the first
21 phase of aggravated murder and one or more of these
22 specifications, then you'd be maybe recessed for a week or a
23 couple of days and we'd come back in and then we'd have a

1 second phase which would last from one to three days usually.
2 And then the Judge would again instruct you on the law and
3 you'd get sequestered again.

4 Okay. Would the sequestration bother you in any way?
5 Would it be a hardship?

6 A No.

7 Q Okay. They put you up at a hotel and they provide
8 you with meals.

9 Do you have any questions that have come up during
10 the course of these proceedings?

11 A No.

12 Q Now, sympathy, I think it's normal for one human
13 being to feel some sympathy for another human being, but you
14 understand you have to make your decision in this case based
15 on the testimony and the evidence and the instructions of law
16 without any sympathy for the defendant; can you do that?

17 A I understand. Yeah.

18 Q And there are certain obligations that we have as
19 citizens in this country. One of those obligations would be
20 that when it's election time, we've got an obligation to bone
21 up on what the issues are and the candidates and then go out
22 and cast a ballot to make sure our system of democracy works.

23 If it's wartime, then we've got an obligation to

1 maybe serve in the military. In fact, we have got young
2 folks overseas in a number of places today doing their duty.

3 There's another obligation of citizenship, that when
4 we're summonsed in as jurors in different cases to make our
5 system of justice work, it's important that we get people
6 from all walks of life with different experiences sitting on
7 these juries. Okay? Would you be willing to undertake that
8 obligation of citizenship, even though it may be difficult
9 to, it sets aside your work schedule for a bit or things that
10 are going on in your personal life, you have to jockey things
11 around. Again, could you sit on this most serious and
12 important of criminal cases to make sure the system works?

13 A Yes.

14 MR. BAILEY: Thank you very much.

15 THE WITNESS: Uh-huh.

16 MR. BAILEY: Now, I'm done with my
17 questions and defense counsel will have an opportunity to ask
18 you some.

19 THE WITNESS: Okay. Thank you.

20 MR. BAILEY: Thank you.

21 THE COURT: Mr. Juhasz.

22 MR. JUHASZ: Thank you, Your Honor.

23 * * *

1 EXAMINATION BY MR. JUHASZ:

2 Q Good morning.

3 A Good morning.

4 Q How you doing up there?

5 A Good.

6 Q I see you have coffee. You need some water or
7 something?

8 A No. I'm good. Thank you.

9 Q Okay. I'm John Juhasz. The Judge had us introduced
10 ourselves a long time ago, back on April the 8th. My buddy,
11 Gerry Ingram, who's had to go back in the jury room to look
12 at something, and I are representing Donna Roberts.

13 Donna's on trial, as you know, for her life. And
14 I'm sure it makes sense to you under those circumstances that
15 we would want to ask questions of the people who might be
16 jurors on this case so that we can try to get a fair jury,
17 the same kind of jury you would want or I would want if we
18 were sitting over there charged with an offense such as
19 Donna. Make sense to you?

20 A Uh-huh.

21 Q Okay. Some of the questions that we have to talk
22 about because this is a death penalty case are very hard
23 questions. And by hard questions, ones that you may not have

1 thought about a lot because people just don't always think
2 about the things that we're dealing with here in this
3 courtroom. So if you need some time as I'm asking you these
4 questions, don't worry about it. That's fine. The only
5 thing that I ask you is, be straight forward. And by that, I
6 don't mean to suggest that you're gonna lie or anything. I
7 guess probably a better way to say it is that the only wrong
8 answer you can give me is something that you think I want to
9 hear rather than what you really think about something; fair
10 enough?

11 A Uh-huh.

12 Q The Judge told you that nobody is here to change
13 your mind about anything. We are not here to change your
14 opinions about if you were exposed to publicity or to change
15 your views about the death penalty, but I'm sure it makes
16 sense to you, again, that because it's the kind of case where
17 the jurors may end up voting on the death penalty that we
18 have to find out those views. That okay?

19 A (Nods head.)

20 Q Gerry, when he's standing up here taking his turn
21 doing this, often likens this to kind of a job interview,
22 except it's a little bit different because usually you go
23 apply for a job and, here, we kind of sent you an invitation.

1 It's a short-term job, but it's an important job. The reason
2 I like to use Jerry's example of that is in a job interview,
3 not only does the prospective employer find out some things
4 about you to see if he or she is comfortable having you work
5 on that job, but you also find out some things about the
6 place to find out if you want to work there. So the reason I
7 tell you that is if, as we talk here today, something comes
8 up that makes you feel that maybe you're not comfortable
9 sitting on this kind of case, it's okay to tell us that. In
10 fact, you should tell us that.

11 And the other thing I want to say is that although
12 lawyers, by either training, experience, or both, sort of
13 take control of and monopolize conversations, I am more
14 interested in what you have to say than what I have to say.
15 So as we get into this, I won't be asking you so many of what
16 lawyers call leading questions which sort of feed you the
17 answer. I'm more interested in hearing your opinions; all
18 right?

19 You've had a little while now to think about, over a
20 month actually, since you learned this was a pretty serious
21 case and to think about the fact that you might be a juror on
22 this case or maybe you thought this sort of passed you by
23 because it took us so long to get a jury, I don't know, but

1 I'm interested, have you had any thoughts since back then on
2 April the 8th about if you were selected as a juror about
3 taking on that kind of responsibility of deciding --

4 A Yeah.

5 Q -- an issue like this?

6 A Kind of overwhelming actually.

7 Q Has -- I know that people don't sit around and think
8 about the death penalty, but when you learned it was a death
9 penalty case, did that make you sort of re-examine your views
10 on the death penalty? Re-examine is the wrong word. Think
11 about maybe the death penalty when maybe you hadn't thought
12 about it for awhile?

13 A Yes.

14 Q Yeah? Okay. How do you feel about taking on the
15 responsibility if you're picked to be as a juror?

16 A Well, I think it's a duty that we have to do so I
17 would be comfortable with that.

18 Q One of the things that I also like to tell jurors
19 because virtually everybody feels as you do, which is you
20 kind of hope you never get that jury summons. And once you
21 get it, you kind of go, "Oh," but then you say, "Well, but
22 this is my civic responsibility."

23 And it is. And Mr. Bailey just talked about that.

1 But at the same time, I want to emphasize to you that even
2 though it's your civic responsibility, we call a lot more
3 people than we're ever gonna need. You know. We've talked
4 to more than twelve people plus four potential alternates in
5 this case. And the reason I tell you that is if there's
6 anything going on in your personal life that's a problem, you
7 know, you should let us know that as well. Is there, I don't
8 see from your questionnaire that there is, other than your
9 medical appointment?

10 A No.

11 Q There's nothing about work or your child or anything
12 like that?

13 A No.

14 Q Okay. You mentioned on your questionnaire and you
15 told Mr. Bailey again today that you really have not heard
16 anything about this case; correct?

17 A Correct.

18 Q All right. And when we say heard, we usually assume
19 that to be from the newspapers or the media. Have you heard
20 any discussions about Donna Roberts or the case either in the
21 courthouse when you've been hanging around here or from
22 people at work or friends or anything like that?

23 A No.

1 Q As Mr. Bailey told you, the basic claim by the
2 government here is that Donna and a fellow by the name of
3 Nathaniel Jackson -- is that a name that you've heard before
4 or not?

5 A No.

6 Q Donna and a fellow by the name of Nathaniel Jackson
7 plotted or planned or conspired to kill Robert Fingerhut.
8 Now, Robert and Donna had been married at one time. They had
9 divorced, but after they divorced, they continued to live
10 together over in Howland and they continued to work together
11 at the Greyhound bus stations in Youngstown and in Warren.
12 Any of that ringing a bell for you?

13 A Huh-uh.

14 Q Okay. During the course of this case, you may hear
15 some evidence, see some evidence, hear some testimony,
16 whatever the circumstances may be, that may well convince you
17 that this Nathaniel Jackson, who I've just mentioned was, in
18 fact, involved in Mr. Fingerhut's death. That's okay. The
19 point I want to make clear to you here is you understand,
20 don't you, that this case is not about Nathaniel Jackson, but
21 about Donna Roberts.

22 A Yes.

23 Q And specifically it's about whether or not Donna

1 Roberts helped Nathaniel Jackson because I think Mr. Bailey
2 told you, he's been telling most of the jurors, that they're
3 not claiming in this case that Donna is what the law calls a
4 principal offender; do you remember him telling you about
5 that?

6 A Trigger man or something?

7 Q Exactly. Exactly. And I mention that because it's
8 actually two separate cases; do you see that? He could be as
9 guilty as sin, but the question in this case is whether the
10 government has any evidence that Donna helped him in any
11 fashion; do you see that?

12 A Yes.

13 Q So if you become convinced that Mr. Jackson was, in
14 fact, involved in this and to use my phrase from a second
15 ago, is guilty as sin, that doesn't necessarily mean that
16 Donna is guilty and that doesn't constitute any evidence that
17 she's guilty; do you agree with that?

18 A Yes.

19 Q Okay. In the State's efforts to convince you that
20 Donna is involved, we expect that they will introduce some
21 letters written by Donna and some tape-recorded telephone
22 conversations between Donna and this Mr. Jackson whom I've
23 mentioned. I'll tell you right now that those letters and

1 those tapes have sexually explicit material in them and many
2 people, I think, would just be downright offended at some of
3 the things they hear.

4 That said, you appreciate the fact that even if you
5 are offended at things that she writes or says, that also
6 does not constitute evidence that she is guilty; do you see
7 that?

8 A Yeah.

9 Q Okay. So you may find yourself in the position of
10 saying, well, you know what, first of all, I think this
11 Jackson guy, from everything I've heard in this trial, is
12 guilty as sin and it may well be that even though you think
13 that, they haven't proved to you that Donna Roberts was
14 involved in helping him; do you see that?

15 A Uh-huh.

16 Q It may also be that you say, you know what, she's
17 not a person that I would like to know because what she says
18 and what she writes I find to be offensive, but that doesn't
19 mean that she was involved here and they didn't prove it. So
20 even though you're offended at what she said or did, you
21 could still find her not guilty; would you have a problem
22 doing that?

23 A No.

1 Q All right. And even though you don't know about it,
2 there has been some hoopla about this case, some media
3 publicity, and that actually brings me to another question,
4 which is that this trial, we anticipate, will get some
5 continued coverage in the media. My question is if you are
6 not convinced that the State has proved beyond a reasonable
7 doubt that Donna was involved in helping this Mr. Jackson,
8 even though there's all this media hoopla about it, would you
9 have any problem or any hesitation voting not guilty if they
10 didn't prove their case?

11 A Just because of the media?

12 Q Yes.

13 A No.

14 Q Okay. You know, we bring that up because you know
15 how sometimes, oh, well, the poor fellow has passed away now,
16 but there was a talk show legend in Youngstown named Dan Ryan
17 and sometimes people would get on Dan Ryan or Ron Verb or one
18 of these other talk shows and they would sort of second guess
19 the jury. You know. Like how could those jurors do that?
20 What in the world were they thinking? And so when we talk to
21 jurors, we want to make certain that we have people who have,
22 for want of a better phrase, the guts to say, "Hey, if they
23 didn't prove it, I'm gonna vote not guilty. If they proved

1 it, I'm gonna vote guilty. I don't care what Dan Ryan and
2 Ron Verb and all the people who call them say."

3 And from the expression on your face, you strike me
4 as a person who doesn't care?

5 A I don't care.

6 Q All right. Good enough.

7 Before I ask you a little bit about your views on
8 the death penalty, I want to talk to you for one second, and
9 you strike me as the sort of person who appreciates this, but
10 I want to make certain. Here we are, we've given you a
11 handout, the Judge has talked to you a little bit about the
12 death penalty, the prosecutor has talked to you about the
13 death penalty, and now one of Donna's lawyers is gonna talk
14 to you about the death penalty and you haven't heard one
15 piece of evidence yet that she's even done anything wrong;
16 correct?

17 A Correct.

18 Q So as Donna's lawyer, you might see my concern that
19 here we are, everybody in the world is talking to you about
20 punishing her and you haven't even heard any evidence that
21 she is guilty; do you see that?

22 A Uh-huh.

23 Q Do you have any thought that because we're doing all

1 of this that she must be guilty, that we're gonna get to that
2 second phase that you read about?

3 A No.

4 Q Okay. You appreciate, don't you, that we have to
5 have rules for everything we do. Otherwise, Mr. Bailey and I
6 would probably be elbowing each other for who gets to talk
7 first and go first and all that other stuff. And one of
8 those rules is that we have to talk about everything that
9 could potentially happen in a case at the beginning of the
10 case; does that make sense to you?

11 A Uh-huh.

12 Q All right. So you don't have any thought that Donna
13 is probably guilty right now?

14 A No.

15 Q Okay. How about the fact that the grand jury has
16 returned what's called an indictment? Does that, your soon
17 to be ex-husband, it's soon to be; correct?

18 A Correct.

19 Q Okay. That's what was on the questionnaire and I
20 didn't know if it was finalized yet. He's a corrections
21 officer. Is an indictment a phrase you've heard before or
22 no?

23 A Not really.

1 Q Okay. You don't have any view, then, that just
2 because the State has charged her with doing these things
3 that I've mentioned that she must be guilty or they wouldn't
4 have charged her?

5 A No.

6 Q Okay. Now, if we can, I'd like to take a couple of
7 minutes and talk to you about your views about the death
8 penalty. And you mentioned the biblical principle or precept
9 of an eye for an eye. But if I understood you, you didn't
10 completely agree with that because I think, as you told
11 Mr. Bailey, the person who runs the stop sign and kills
12 somebody would be responsible; is that correct?

13 A Correct.

14 Q Can you tell me a little bit more about when you
15 think the death penalty is appropriate?

16 A Well, I think it would just depend on a certain case
17 and what facts you heard and what evidence was presented if,
18 you know, if it was cold, calculated and, you know, they did
19 it on purpose and it was, you know, I'd think, yeah, then
20 they should get the death penalty. But if they just, you
21 know, if it's an accident or, you know, they didn't really
22 plan it, then -- I think it would just depend on the certain
23 case.

1 Q All right. One other ground rule that comes up that
2 I want to make certain that you're aware of which is, in my
3 efforts to try to summarize what I think you have said, don't
4 let me put words in your mouth. I want to make sure that I
5 understand you, but I don't want to tell you what you think.

6 A Okay.

7 Q I don't want to say it incorrectly. So if I say
8 something wrong, stop me.

9 A Okay.

10 Q I'm getting the impression that you have kind of a
11 thermometer or a barometer that the more serious the type of
12 homicide and the more cold-blooded and premeditated, the more
13 likely it is that the person should get the death penalty.

14 A Yes.

15 Q Is that a fair reading of how you feel?

16 A Yes.

17 Q Now, that said, are there certain offenses in your
18 mind for which the death penalty should be automatic which
19 is -- in other words, is there something so bad that if a
20 jury finds beyond a reasonable doubt in the first phase this
21 is what the person did, we don't have any doubt, based on
22 reason and common sense, this is what they did, that's so bad
23 they got to get the death penalty, no excuses, no

1 explanations, no answers?

2 A I don't think I understand the question.

3 Q All right. Okay. I think when you were talking to
4 Mr. Bailey you mentioned premeditated murders and murders
5 where something else was happening. I think you said --

6 A Rape.

7 Q Yeah. Rape or robbed in the process. Okay? So
8 let's take this one, what lawyers call a felony murder and
9 let's make me the bad guy. Let's pretend that I decide that
10 I need some money and I'm gonna go to the 7-Eleven and get,
11 I'm gonna rob the 7-Eleven. I go in there, I take the gun,
12 pull it out, demand the money. And the clerk, whether it's a
13 he or she, doesn't give me my trouble, doesn't pull out any
14 guns, just says, "Here, it's not worth it, take the money and
15 go, please. Just don't hurt me."

16 Well, I'm a jerk and even though he or she says,
17 "Don't hurt me," I shoot 'em. Okay?

18 Again, what we typically call a felony murder and
19 one of the reasons to consider imposing the death penalty in
20 Ohio. My question is, from what I heard you tell Mr. Bailey,
21 that would be a murder where something else happened in the
22 process. In that case, a robbery rather than a rape. Are
23 your feelings about the death penalty such that if a jury

1 finds me guilty of doing exactly what I've just laid out for
2 you that I should get the death penalty no matter what?

3 A Yes.

4 Q Okay. And you mentioned premeditated to Mr. Bailey
5 and I think cold-blooded or calculated when we were talking
6 this morning. Are there murders in your mind that you feel
7 the same way about this one that we have just talked about
8 which is, well, I'm trying to think of one real quick. Let's
9 just say that, you know, I've been in this courtroom now for
10 five weeks with Gerry Ingram. Five weeks. All right? I
11 just can't take it anymore. The guy is driving me nuts. And
12 besides, he got that Suburban and I really like that
13 Suburban. I'm gonna kill him and I'm gonna steal his
14 Suburban after I kill him. And I don't just come up with
15 this on the spur of the moment. Every day as we leave court,
16 I'm thinking more and more. I just can't do this. I just
17 can't take it anymore. And I plan it out and, you know, I'm
18 not gonna do it openly. You know. I mean I come up with a
19 plan that makes it look like it's gonna be, you know, some
20 kind of a drive-by shooting and nobody will ever suspect me.
21 It takes me weeks to plan this out. Okay? And I do it in
22 such a fashion that I think we'd probably all call it
23 cold-blooded, which is, you know, I try to do it in a

1 neighborhood where it looks like it's going to be some random
2 act of violence and maybe I'd even set Gerry up to go to that
3 neighborhood. I tell him, "There's a real important witness.
4 You got to go to this bad drug house though."

5 And when he gets there, I reach in the window and,
6 boom, put a gun to his head and kill him. So I've made a
7 plan and that's a pretty cold-blooded killing. Is a
8 premeditated murder like that, in your view, something that
9 if the jury, again, finds me guilty beyond any reasonable
10 doubt I should get the death penalty for that?

11 A Yes.

12 Q Okay. And again, no questions asked on that?

13 A No.

14 Q Correct?

15 A Uh-huh.

16 Q All right. There are, as I understand it, the way
17 you feel about the death penalty, some offenses for which I
18 could be guilty of murder that even though you think I should
19 go to jail for a very long time, I should not get the death
20 penalty; correct?

21 A Correct.

22 Q And I'm, did you ever take art in high school?

23 A Uh-huh.

1 Q Okay. Do you remember what, I just thought of this,
2 do you remember what a chromatic scale where you sort of, you
3 know, you go from, I remember the first one we had to do was
4 from white to black and we just had to, you know, the art
5 teacher was teaching us to do different shades of gray. You
6 sort of have a chromatic scale for these types of homicide;
7 is that it?

8 A Yes.

9 Q And the ones that are, let's call 'em the black ones
10 are the 7-Eleven thing I just told you about and this thing
11 that I just planned out and cold-bloodedly killed Gerry;
12 correct?

13 A Uh-huh.

14 Q And those ones in that black zone, if you find that
15 person guilty of that, if I understand it, that person is
16 automatically gonna get the death penalty in your mind?

17 A Well, I don't know if I could say that for sure.

18 Q Okay.

19 A Because you'd have to think of all the facts and all
20 the evidence and everything that was presented in front of
21 you before because there's other sentences you could give
22 too.

23 Q Okay. And that's exactly what I'm trying to get at.

1 A Uh-huh.

2 Q And you know from your reading of the thing, forgive
3 me, we bring people in here and we give 'em all sorts of
4 rules and we expect them to understand and play by our rules.
5 Are you comfortable with, having read that handout, with how
6 a death penalty works in Ohio or do you want to take a minute
7 and go over that?

8 A I think I understand.

9 Q All right. So you know, as you just said, that
10 there are, there's more than one penalty to consider?

11 A Yes.

12 Q Okay. I had a juror -- Mr. Bailey stole my box a
13 little while ago, my box example, I'm gonna steal what this
14 juror said a few weeks ago because it's probably the best way
15 I can think of or have heard to explain it.

16 She was talking about her views on the death penalty
17 and she said, well, for a certain type of offense, the death
18 penalty is sort of like, you know, chocolate is my favorite
19 ice cream. And so if I go to Baskin Robbins, I might think
20 about or consider other options, but unless somebody
21 convinces me otherwise, I'm gonna go with chocolate. Okay?
22 And she was likening her views about the death penalty for
23 certain offenses to that chocolate. I'm sensing that with

1 you. But, again, I'm not trying to put words in your mouth.
2 It sounds to me like for at least the two types of things we
3 have talked about this morning that the death penalty is sort
4 of your chocolate ice cream, that unless somebody talks you
5 out of that, that's what you're gonna impose if you find that
6 person guilty; is that accurate or is that not accurate?

7 A I'd say yes.

8 Q Okay. You, you're not saying that you would rule
9 out the other sentences?

10 A No.

11 Q But for those type of offenses, the death penalty
12 has a leg up; correct?

13 A Yes.

14 Q And let's make me the bad guy in those two examples,
15 as I did. If you find me guilty at the first phase beyond a
16 reasonable doubt, the death penalty sort of has a leg up;
17 correct?

18 A Uh-huh.

19 Q And I have to talk you out of imposing it; correct?

20 A Yes.

21 Q Okay. And again, it's okay if you feel this way.
22 We just need to know that. At the second -- you know how
23 Mr. Bailey talked about the box?

1 A Uh-huh.

2 Q The State has to prove its case at the first phase.
3 They also have a box to fill at the second phase. And that
4 box is that the reasons to impose the death penalty outweigh
5 the reasons not to by proof beyond a reasonable doubt. Do
6 you remember reading something about that?

7 A Uh-huh.

8 Q And him talking about that? Okay. I'm sensing from
9 you and, please, again, I'm just trying to keep this moving.
10 I'm interested in really hearing what you have to say, that
11 for those couple types of offenses that we've talked about,
12 because the death penalty has a leg up, at least for those
13 offenses, not for every offense that you might ever be called
14 upon to decide, but for those type of offenses, that box
15 doesn't start out empty because you have a predisposition to
16 vote for death?

17 A No.

18 Q Okay.

19 A No. I think it would start out empty.

20 Q Okay.

21 A It would just, especially if we went through the
22 first phase though, I would already, we would already have
23 known whether she's guilty or not.

1 Q Right.

2 A So then the second phase, you have to determine what
3 the punishment would be.

4 Q Correct.

5 A Right.

6 Q Exactly. And here's my concern and I kind of need
7 you to explain it for me. You told me that for a couple of
8 these types of offenses that you have a predisposition for
9 the death penalty going into the second phase?

10 A But I don't think that that would be the first thing
11 that I thought of, you know, that automatically, you know,
12 the death penalty. No.

13 Q Okay.

14 A I would have to think about it. You know what I
15 mean?

16 Q Sure.

17 A I wouldn't be able to just say death penalty.

18 Q Sure. I think we got away from automatically.

19 A Yeah.

20 Q Because I think you told me it wouldn't be automatic
21 for you. What I'm interested in finding out, though, is if
22 it has a leg up. See, then, my concern is that they, at
23 least for those kind of offenses, and I'm not saying for

1 everything you might ever be called to hear in a case, but
2 for those kind of offenses that we talked about, that because
3 it's got a leg up you're not considering all four of them
4 equally. Am I making sense about that?

5 A Yeah, but I think I would be able to consider all
6 four of them equally.

7 Q Okay. You see, because we want to make sure that we
8 have folks who will start out --

9 A I mean I would rather not have to have the death
10 penalty. You know what I mean?

11 Q Well, I think I do, but I'd like you to explain that
12 for me.

13 A That's a harder decision to make, to take somebody's
14 life.

15 Q Okay.

16 A So that would, I would hope that, you know, even
17 though it's in front of you, it would be something that I
18 would rather not have to do, but I would if that's what the
19 evidence and the facts had you do.

20 Q Fair enough. And let's talk about that for a couple
21 minutes more because I think I know where you're coming from
22 here, but I want to make certain. We've interviewed a lot of
23 folks and I'll let you in on another secret, this isn't the

1 first time I've done a death penalty case. So I've
2 interviewed folks in other cases. And what we sometimes find
3 out is that people have views about the death penalty. And
4 it's one thing to be out there on the street and to say,
5 "Well, you know what, if that SOB did that, he should get the
6 death penalty."

7 But then it's another thing to come into a courtroom
8 and say, "Well, you know what, it's easy to say out there,
9 but now I'm the one who may actually have to do it."

10 Is some of that going through your mind here?

11 A Yes.

12 Q Okay. Now, what I want to satisfy myself as to
13 obviously, and I apologize for these questions, but I'm sure
14 you can appreciate why I have to ask these questions.

15 A Uh-huh.

16 Q You have those views about the death penalty that we
17 talked about, for the robbery, murder, the planned-out thing
18 we talked about. Is the fact that you are sort of sitting
19 here in the courtroom rather than out on the street saying,
20 "That SOB should get the death penalty for that," is that
21 something that sort of tempers against or diminishes that
22 thought that the person, that the death penalty has a leg up?
23 Am I asking that clearly or am I not?

1 A You're not.

2 Q All right. My concern, honestly, is that for the
3 two types of offenses that we talked about that the death
4 penalty has a leg up?

5 A Uh-huh.

6 Q Okay. Now, that leg up usually, frankly, translates
7 in my mind to, well, the box isn't starting empty for her
8 because she found this person did this, she doesn't like this
9 kind of offense, she thinks the death penalty is appropriate,
10 and my concern is that she is not gonna start out with that
11 box being empty, that the death penalty has a leg up, which
12 means there's something already in that box helping the
13 government convince her that the death penalty should be
14 given; am I making that part clear?

15 A Uh-huh.

16 Q Okay. First of all, do you feel that way or do you
17 not?

18 A I don't think I do.

19 Q Okay. And then my second question is, and I hope I
20 make this clear now, is that even though you have those
21 feelings about the death penalty we have talked about, is the
22 fact that you would actually be sitting here doing it sort of
23 helping make sure that you don't put something in that box

1 before they present evidence to you?

2 A Yes.

3 Q Okay. Can you tell me what your feelings are about
4 life imprisonment as an alternative to the death penalty?
5 You know that there are three life sentencing options?

6 A Right.

7 Q Do you have thoughts about that, when life
8 imprisonment is more appropriate as a punishment than the
9 death penalty?

10 A (No response.)

11 Q Hard question.

12 A Yeah.

13 Q I know.

14 A Well, it is taking your whole life and it's just
15 going down the drain so.

16 Q All right. Okay. So you do not consider it an
17 insignificant punishment as compared to the death penalty?

18 A No, no. Not at all.

19 Q We ask that question because some jurors feel that
20 way. It's like, hey, you took a life, you give a life and
21 anything less is not really a punishment.

22 A No.

23 Q Some people think that, you know, prisons are like

1 country clubs and so if you give somebody a life sentence
2 it's like going to the mall every day or something; do you
3 feel like that or do you not?

4 A No.

5 Q Have you ever heard the argument about the death
6 penalty that, you know what, we have to pay, as tax payers,
7 to house these people and I'd rather just execute them
8 instead of paying all my hard-earned tax dollars to keep
9 these people in prison; have you heard that argument?

10 A Yes.

11 Q Is that an argument with which you agree?

12 A No. Because I think it would be worse to stay in
13 prison for life than --

14 Q Okay. I'm gonna ask you a couple more questions
15 about the death penalty and I promise you we're done with it.

16 A Okay.

17 Q You do understand that the life sentencing option of
18 those four you were given of life without parole does mean
19 life without parole?

20 A Yes.

21 Q It's not like one of these things where, well, yeah,
22 they're all telling me that and they're winking at me, but
23 really this person gets good time and gets a chance to get

1 out in X number of years. You understand it does not work
2 that way?

3 A I understand that.

4 Q Have you seen the movie Shawshank Redemption?

5 A Yes.

6 Q And, you know, I use this example all the time and I
7 can never remember the character that Morgan Freeman plays,
8 but you remember in the movie a couple times he goes in front
9 of the parole board and he says, "Well, yes, I'm
10 rehabilitated. I've learned my lesson. I came in as a young
11 boy and now I'm a man."

12 And he comes out and they stamp his file rejected.
13 I use that example because even with the two sentencing
14 options where there is a possibility of parole, you
15 understand that's not a guarantee that that person would get
16 out?

17 A Yes.

18 Q Okay. That just means they get a chance at a parole
19 hearing after 30 full years, no good time, or 25 full years,
20 no good time; you understand that?

21 A Uh-huh.

22 Q So you wouldn't hesitate to look at one of those
23 options in the sentencing phase because you think it's kind

1 of a slap on the wrist in exchange for a death?

2 A No.

3 Q Okay. Have you heard the phrase before taking the
4 fifth?

5 A Yes.

6 Q It sometimes, I think, gets a little bit of a bad
7 rap in the media or in the movies and TV because a lot of
8 times it's the cold, hard criminal and we all know from
9 watching the TV show or the movie up to this point that he is
10 a cold, hard criminal sitting in the room, smoking a
11 cigarette, staring blankly at the ceiling saying, "I'm taking
12 the fifth," and we all know you're guilty.

13 That's only a very small part of the fifth
14 amendment. The fifth amendment says that anybody who is
15 accused by the government of committing a crime doesn't have
16 to do anything to help the government convict them of that
17 crime. Okay? What is sometimes called the privilege against
18 self-incrimination. Have you heard that phrase before?

19 A Huh-uh.

20 Q Okay. That's sort of the fancier name for "I'm
21 taking the fifth."

22 A Okay.

23 Q Is that you invoke your privilege against

1 self-incrimination. There are a lot of things that come
2 about as a result of that privilege against
3 self-incrimination and it sort of leads to why I like to use
4 the box that Mr. Bailey stole from me.

5 First of all, if you and I are playing a game, and
6 you know what, it could be Monopoly, okay, if neither one of
7 us rolls the dice first, I go, "You roll the dice first," and
8 you go, "No, you roll the dice first."

9 Well, the game never gets going; do you see that?

10 A Uh-huh.

11 Q So somebody has to make the game go. And in the
12 case where it's a person charged with a crime because of the
13 privilege against self-incrimination, they don't have to do
14 anything so that necessarily makes this side roll the dice
15 first; does that make sense to you?

16 A Yeah.

17 Q Many people think of -- well, I'm sorry. Before I
18 ask you that, because they have to show you if they can that
19 the person committed the crime and because the person sitting
20 at that table doesn't have to do anything, the law has said
21 that the privilege against self-incrimination, one of the
22 affects of it is that we have a presumption of innocence.
23 Now, is that a phrase you've heard before?

1 A Yes.

2 Q Okay. So you know that everybody in a criminal case
3 in this country who is accused of a crime by the government
4 is presumed not to be, not to be guilty, to be innocent?

5 A Yes.

6 Q That's not the way it is in a lot of countries quite
7 frankly. Actually, quite frankly, a lot of countries have a
8 presumption of guilt. And if the government charges you with
9 something, you have to prove you didn't do it. What do you
10 think about our presumption of innocence, as opposed to the
11 presumption of guilt? Good idea, not a good idea?

12 A I think it's a good idea.

13 Q Any problem looking at Donna Roberts now? You don't
14 know anything about this case except what the lawyers have
15 told you. So you have no problem looking at her saying, "I
16 can presume you to be innocent"?

17 A Yes.

18 Q "And they are gonna have to show me otherwise if
19 they can"?

20 A Uh-huh.

21 Q It's probably popular to think of because everything
22 we do in this country is some kind of a contest or another,
23 that it's probably popular to think that if a verdict in a

1 criminal case is guilty, the State wins, the government wins.
2 If the verdict is not guilty, the defendant wins. It doesn't
3 really work like that. And let me tell you why. Let's go
4 back to this presumption of innocence. Because she's
5 presumed innocent, that's where I get my box, see, they have
6 to produce enough evidence to convince you, if they can, and
7 you sort of pour the evidence into a box in your mind's eye,
8 this imaginary box. If they fill up the box beyond the line
9 called reasonable doubt, because you know from what you've
10 heard that it's beyond a reasonable doubt; correct?

11 A (Nods head.)

12 Q Then they have proved their case. And in that case,
13 they win.

14 If, however, they can't produce enough evidence to
15 fill up that box in your mind's eye beyond that line called
16 beyond a reasonable doubt, then they have lost. It isn't
17 that she wins, it's that they lost because they said by
18 charging her, they sort of implied we're gonna prove this to
19 you beyond a reasonable doubt; okay?

20 A (Nods head.)

21 Q Now, that makes it a little bit more of a one-sided
22 proceeding than we're usually used to because when you decide
23 things in life, you know, if I accused Lori here, our court

1 reporter, of doing something bad, okay, before you -- and
2 let's say you were the person put in charge of deciding did
3 she do it or didn't she, you would probably want to hear what
4 Lori had to say about that allegation; correct?

5 A Uh-huh.

6 Q Before you made up your mind.

7 A Uh-huh.

8 Q It's a little bit different, most of us operate that
9 way because we want to be fair and jurors want to be fair,
10 but it's a little bit different with the presumption of
11 innocence because they either convince you or they don't
12 convince you. She doesn't have to do anything; do you see
13 that?

14 A Uh-huh.

15 Q Any problem with that?

16 A No.

17 Q It sort of changes our usual thing because you want
18 to be fair and hear both sides, but you appreciate you may
19 not. That's why I like to use the box because they have to
20 fill up the box if they can, but she doesn't put anything
21 into the box and she doesn't take anything out of the box; do
22 you see that?

23 A Uh-huh.

1 Q So -- and again, let's talk about the possibilities
2 both ways because we have to do it now. If she decides not
3 to testify or as Mr. Bailey said, you know, Ingram and I can
4 sit over there doing the jumble or drinking Mai Tais or
5 playing Yahtzee or whatever we want to do. If she decides
6 not to take the witness stand, you understand it doesn't
7 necessarily mean that she's trying to hide something from you
8 like in that example I gave you at the beginning about taking
9 the fifth; do you see that?

10 A Yes.

11 Q It just may be a statement to you, not a verbal
12 statement, but a statement through her actions of saying,
13 "You know what, they have to fill up the box. I don't think
14 they filled up the box. There's nothing for me to do here."

15 Do you see that?

16 A Uh-huh.

17 Q Okay. Let's do the other side of that. Let's say
18 that she does decide that she wants to testify. One of your
19 jobs as a juror is to decide whether every person who gets on
20 the witness stand where you're sitting right now is telling
21 you the complete truth, none of the truth or some of it's
22 true and some of it's not; do you see that?

23 A Uh-huh.

1 Q Okay. What lawyers call credibility or
2 believability.

3 The Judge will give you a whole bunch of tests for
4 deciding that, but what you'll find out is that they're
5 pretty much the kind of things that you would use in your
6 daily life anyway deciding whether somebody is telling you
7 the truth.

8 One of the things you might want to consider if
9 Donna does testify is that she has a stake in the outcome of
10 the case; would you agree?

11 A Uh-huh.

12 Q You could say to yourself, "Well, she's got a reason
13 for telling me this. She's charged with capital murder for
14 God's sake."

15 That doesn't mean, however, does it, that she just,
16 you just reject her testimony out of hand saying, "Well,
17 she's the defendant. She's automatically gonna lie to me;
18 correct?"

19 A No.

20 Q You have to do that with every witness; do you think
21 you could you do that?

22 A Yes.

23 Q You see there might be other witnesses who get on

1 the witness stand besides Donna, maybe even witnesses from
2 the State's side of the case who might also have some stake
3 in the outcome; do you see that?

4 A Uh-huh.

5 Q Okay. You, well, I guess still are, I was gonna say
6 you were, but I guess you still are until it's final, married
7 to a corrections officer. Do you, is there anything about
8 that marriage and the fact that it was a corrections officer
9 that would cause you that if a law enforcement officer came
10 in here that you would sort of give up the job of testing his
11 credibility because you would say, "Well, he's a cop.
12 They're always gonna tell the truth"?

13 A No.

14 Q Okay. You see, don't you, you have to judge their
15 credibility just like anybody else?

16 A Yeah.

17 Q And you think you can do that?

18 A Uh-huh.

19 Q Okay. Mr. Bailey talked to you about some important
20 decisions. And as I've been talking about this silly box,
21 you have to use that to decide whether the State's produced
22 enough evidence to convince you beyond the existence of any
23 reasonable doubt about her guilt; do you see that?

1 A (Nods head.)

2 Q There may be a situation, you know how we talked
3 earlier where I said you might, after you read those letters
4 and hear those phone calls, you might be offended at some of
5 the things she said, but that's not necessarily evidence that
6 she's guilty; do you remember that?

7 A Uh-huh.

8 Q Okay. There could be a situation where maybe they
9 put some evidence into that box I keep talking about, but
10 they don't fill it up beyond the line called beyond a
11 reasonable doubt. So you may look in there and say, "Well,
12 okay, Juhasz got me into this box thing now so let me look in
13 the box and, yeah, there's some evidence in here and, boy, I
14 don't like it, but you know what, how do I figure out whether
15 they've filled it beyond that line called reasonable doubt?"

16 Well, let me suggest this to you. Mr. Bailey talked
17 to you about making important decisions. And when you make
18 them, whether you do it on a piece of paper or sort of in
19 your mind's eye, don't you sort of weigh out the pros and the
20 cons?

21 A Uh-huh.

22 Q Because if there are some cons that are pretty
23 substantial, it's not a good idea; correct?

1 A Correct.

2 Q I've used the example with a couple of jurors like
3 if you get done here today and say, "You know what, it's ten
4 after 11, I think I'll bop down to the Mercedes dealership
5 and buy a new Benz," you wouldn't just do that willy-nilly;
6 correct?

7 A No.

8 Q Okay. There are things to think about; correct? I
9 mean the pros are obvious. It's the cons you have to worry
10 about.

11 A Yeah.

12 Q Well, it's kind of the same thing in deciding
13 whether they have filled up the box. On one side of this
14 check list will be all the reasons why they tell you the
15 defendant is guilty. On the other side would be doubts that
16 you have thought about as you've listened to the evidence,
17 doubts maybe that Donna's lawyers have brought up or doubts
18 that other jurors have brought up as you're talking about the
19 evidence; do you see that?

20 A (Nods head.)

21 Q What you have to do with those, talking with the
22 other jurors, is to analyze each one. So you take the first
23 one. You go, "You know what guys, I have a doubt about

1 this."

2 And somebody goes, "Well, here's a piece of
3 evidence. That proves that your doubt is not based on reason
4 and common sense."

5 And you look at it and say, "You know what, you're
6 right. I forgot about that piece of evidence."

7 So you scratch that one off. You have to go through
8 each doubt that you have like that. If, when you're done,
9 you have one left, could be more than one, but if you have at
10 least one doubt left on that side of the check list and no
11 matter how you think about it, it's based on reason and
12 common sense, then they haven't proved their case; do you see
13 that?

14 A Uh-huh.

15 Q No problem if that happened coming out and saying,
16 "You know what, you guys seem like nice guys and you're good
17 prosecutors, but you just didn't have enough evidence here;"
18 no problem doing that?

19 A No.

20 Q The State may ask you to rely upon what lawyers call
21 circumstantial evidence. Have you heard that word before?

22 A Uh-huh.

23 Q Other than when Mr. Bailey was talking about it?

1 A Uh-huh.

2 Q He's right when he says that juries can rely upon
3 circumstantial evidence to find guilt. But when you do that,
4 you have to sort of remember that thing I just talked about
5 about reasonable doubt. And you have to make sure that if
6 they ask you to make an inference, to jump from A to B with
7 some circumstantial evidence, that there's no other
8 reasonable explanation or doubt about that.

9 Here's a little story I like to tell about how I
10 think that works. I want you to pretend for a second that
11 you are at my house late in August. It's about 5 or 6:00 in
12 the afternoon, about 85 degrees, humid as all get out and the
13 wind is starting to kick up because we're gonna get one of
14 those late afternoon thunderstorms. You know. It's getting
15 all dark out in the west, even though the sun is still out.
16 I'm out making you something cold to drink in the kitchen and
17 all of a sudden we hear a big crash in the living room. And
18 when I run in to see what's going on, my son Mike's cat goes
19 charging out between my legs. I go into the living room and
20 look. And to my left, there's my son, Mike, like this
21 (indicating) with his hands over his face. I look to my
22 right, there's one of my wife's Norman Rockwell plates
23 knocked off of the mantle onto the hearth splattered. Couple

1 feet away, one of Mike's Nerf balls. Okay?

2 Could be, from what I told you, okay, that's
3 circumstantial evidence, and it's circumstantial because I
4 didn't see who broke the plate; right?

5 A Uh-huh.

6 Q I know it's broken, but I didn't see who broke it;
7 correct?

8 Could be that Mike was throwing the Nerf ball like
9 he's been told 655,241 times not to do in the house and the
10 noise scared the cat.

11 Could be that the cat walked up on the mantel like
12 she's been told not to do 655,241 times and Mike is going,
13 "Oh, boy, this is gonna be a problem. And by the way, since
14 I never pick anything up, there's my Nerf ball over by the
15 plate. I may get blamed for this."

16 It could be that the wind from that approaching
17 thunderstorm knocked it off, the noise scared the cat and
18 Mike's thinking he's toast just because he's at the scene of
19 the crime as it were.

20 Now, there's circumstantial evidence there where I
21 suppose I could ask you to make an inference that Mike broke
22 the plate by throwing the Nerf ball, but it wouldn't really
23 be fair, would it, because there'd be other explanations that

1 made just as much sense?

2 A Uh-huh.

3 Q Any problem holding the State to that kind of
4 analysis and that kind of burden when you test their
5 circumstantial evidence?

6 A No.

7 Q Any reason you can think of, any questions you have
8 that have come up or any reason you can think of why you
9 cannot serve on this jury?

10 A No.

11 Q Mr. Bailey mentioned you would be an alternate if
12 you're selected. That sometimes conjures up the phrase,
13 "Always the bridesmaid and never a bride."

14 He is correct, however, there are an unbelievable
15 number of cases where we do need the alternates. So you
16 appreciate that even if you're selected as an alternate, it's
17 important to pay attention just as if you're one of the
18 regular twelve?

19 A Yes.

20 Q You may well be called upon; do you see that?

21 A Yes.

22 Q Okay. Any other questions that you have?

23 A Nope.

1 MR. JUHASZ: Appreciate your patience with
2 me. Thanks.

3 Thank you, Your Honor.

4 LISA MASSARY: Thank you.

5 MR. BAILEY: Pass for cause.

6 MR. JUHASZ: Pass, Your Honor.

7 THE COURT: Okay. You will be in the pool
8 from which this jury will be seated. I would ask you to go
9 back downstairs and have a seat until we have everybody back
10 up here.

11 I will continue to remind you until you're sick of
12 hearing me not to discuss anything or read anything about the
13 case in the meantime.

14 LISA MASSARY: Okay.

15 THE COURT: Okay? Thank you.

16 Gentlemen, do you want to approach?

17 MR. JUHASZ: May I get Mr. Ingram, Your
18 Honor?

19 THE COURT: Yes.

20 MR. JUHASZ: Thank you.

21 (Whereupon, a conference was held at the bench.)

22 (Whereupon, a recess was had commencing at 11:35 a.m. and
23 concluding at 11:43 a.m.)

PROSPECTIVE JUROR JOANNE M. BATES,

EXAMINATION BY THE COURT:

Q You are Joanne; right?

A Yeah.

Q Okay. Is that your married name, Bates?

A Yes, it is.

Q The Bates' were one of the first families in Hartford Township way back at the very beginning of the township. Still quite a few of them living in Hartford.

You read that handout that was given to you; right?

A Uh-huh.

Q As you know, this is a case involving primarily two aggravated murder charges with specifications that have been filed against Donna Roberts by the State of Ohio.

In Ohio, just because a person commits a murder does not mean that they necessarily face the death penalty. The legislature, in drawing the statute up, has it so that if a person is found guilty of aggravated murder with a specification and if the State proves beyond a reasonable doubt both those factors, then that means that the death penalty becomes a possible recommendation, option, by the jury, along with life without parole, life without parole before 25 or 30 years.

1 At this point, we have no idea what this jury is
2 going to find. If the State fails to prove their case beyond
3 a reasonable doubt about the murder and the specifications,
4 then this jury would properly return a verdict of not guilty.
5 It would be the end of the trial.

6 If, however, the State maintains that burden of
7 proof, then the trial would go on to a second phase if they
8 make a finding of guilty.

9 Now it seems, it makes some sense if you don't think
10 it through, I think, that, well, why not wait until that
11 second phase to ask the questions about whether people agree
12 or disagree with the death penalty. That isn't workable
13 because we can't eliminate anybody at that point. We have to
14 have the same jury. So we have to cover this up front.

15 Now, a person on this jury that believed if you take
16 a life, you forfeit your life, an eye for an eye, that person
17 couldn't possibly be fair to the defendant because the
18 defendant has a right, if the jury makes a finding of guilty,
19 to require the State to prove that the aggravating
20 circumstances, that is reasons why the jury should consider
21 and impose the death penalty, are outweighed by the
22 mitigating factors. Mitigating factors are reasons for the
23 jury to consider why, in this particular case, the death

1 penalty should not be imposed. The State has to do that
2 beyond a reasonable doubt. The burden is always upon the
3 State to prove the case or not prove the case. Defendant has
4 no duty to do anything. The defendant can choose to sit and
5 not talk during the whole trial. Her attorneys have the
6 right to sit there and do nothing because it's up to the
7 State to convince the jury or not to convince the jury of the
8 truth of the charge.

9 Likewise, if you had a person on the jury that could
10 not, under any circumstances, make a decision on the death
11 penalty, there are some people that couldn't picture
12 themselves making that decision, a person of that mind could
13 not be fair to the State. And the State does have the right
14 to request this jury's consideration and imposition of the
15 death penalty if they prove all factors necessary.

16 So that's the reason we go into these questions at
17 this point in time. Whatever your particular beliefs are
18 concerning the death penalty, that's fine. These folks will
19 respect your opinion, but they have a right to know if you
20 can follow the law. That's the bottom line.

21 The other issue will be primarily about pretrial
22 publicity, whether you've been exposed to things in the
23 newspaper that you are unable to lay aside. This case, to be

1 tried fairly, has to be decided on the evidence presented in
2 this courtroom. Okay? Very good.

3 Mr. Bailey.

4 MR. BAILEY: Your Honor.

5 **EXAMINATION BY MR. BAILEY:**

6 Q Morning, Mrs. Bates.

7 A Hi.

8 Q I'm Ken Bailey. I'm an assistant prosecutor. I
9 think you saw me about five weeks ago in the other courtroom.
10 I told you at that time I'd be joined by Chris Becker, who
11 was here, but he had to run out and get something. And the
12 two of us are responsible, as assistant prosecutors, for
13 prosecuting this particular case on behalf of the people of
14 Trumbull County and the people of the State of Ohio.

15 And as the Judge said, we are here today to make
16 sure that the folks who are selected to serve on this
17 particular jury can be fair and impartial to both sides, both
18 to the defendant and to the people of the State of Ohio. And
19 for that reason, we're going to be asking you some questions
20 regarding your prior experiences and your opinions on
21 different things. Not because we're snoopy and we like to
22 pry into folks' backgrounds, but to make sure that the people
23 who are selected here can be fair and impartial.

1 There aren't any right answers. There aren't any
2 wrong answers to these questions. There are only open and
3 candid answers. If you have any questions that come up
4 during this proceeding pertaining to what we're doing here
5 regarding to the procedure or other things, feel free to ask
6 me because this is the one chance that we get to have a
7 little give and take. Okay? And it's important that if you
8 have questions they get cleared up at this point.

9 A All right.

10 Q We can't have any contact with you after we're done
11 today until the case is over. If it goes into two phases,
12 we've got to wait until the end of the second phase until you
13 talk to us because sometimes jurors want to talk to the
14 lawyer afterward. But we want you to know that if we run
15 into each other out in the hallway or in an elevator or in a
16 restaurant or something like that and we don't talk to you,
17 it's not because we're trying to snub you or to be
18 antisocial. It's just that under our rules of conduct, all
19 we're allowed to do maybe is say good morning or good
20 afternoon. If we engage in anymore conversation, we could be
21 subject to discipline and it could be result in a mistrial,
22 and we don't want to do this over again. Okay? So that's
23 why I let everybody know about that.

1 A I understand.

2 Q Now, as the Judge indicated, we're going to ask you
3 some questions about pretrial publicity and the death penalty
4 as a punishment and then some general questions. And if I
5 don't make myself clear on anything, you stop me and have me
6 rephrase it; okay?

7 A Okay.

8 Q Now let's talk about this pretrial publicity for a
9 second. I noted in your questionnaire, you indicate that you
10 look at the Tribune on a daily basis?

11 A Yeah.

12 Q As well as the PD. And you also, and you rarely
13 look at the TV news locally; right?

14 A Well, actually, we watch Cleveland stations.

15 Q Okay.

16 A For the most part.

17 Q Because you're up in Mesopotamia?

18 A Right. So we're kind of half way between.

19 Q Okay. So it would be like 3, 5 and 8 that you get?

20 A Pretty much, yeah.

21 Q Okay. So, and at this point, you don't recollect
22 anything at all about this case; right?

23 A We had the local news on, my husband had it on one

1 day last week and it started to come on and I left the room.

2 Q Okay.

3 A My family has been very understanding that way.

4 Q Okay. And there's a reason that the Judge tells
5 you --

6 A Right.

7 Q -- that you have to continue doing that.

8 A Right.

9 Q Because as you look around the courtroom, there's
10 nobody here from the news media. But from time to time, when
11 we start the testimony tomorrow, you're gonna be seeing
12 reporters come in from the Tribune and from the Vindicator
13 and there will probably be TV station people setting up their
14 cameras. They can't film the jurors, but they film the other
15 participants. And they'll only be here generally for a
16 little bit. I mean Chris Bobby might be here from the
17 Tribune for half a day or something or Peggy Sinkovich from
18 the Vindicator for the better part of the day, but then
19 they're gonna be gone because there are other stories going
20 on throughout the county.

21 A Right.

22 Q And they'll stop in from time to time. But then
23 they're gonna do a story based on what they heard. And

1 they're gonna miss everything that had happened, that was
2 asked and answered before they got in here and after they
3 leave. So it may well be that they take something out of
4 context. Unintentionally, but that's the nature of the
5 beast. They got to run in and print.

6 A Yes.

7 Q And what they report on may give you a convoluted
8 view of what happened that day. It may be totally out of
9 context and be just the opposite --

10 A Right.

11 Q -- of the whole gist of the testimony.

12 Okay. And that won't be deliberately, but it
13 happens.

14 So it may be that if you have your husband save the
15 papers for you that you read it after the whole trial is
16 over, after both phases are done and you may say, "Gosh, I
17 sat through that whole trial in Judge Stuard's court and
18 whoever reported on that case must have been sitting in Judge
19 Logan's court covering a different case."

20 Okay?

21 A I understand.

22 Q So you'll be able to do that? Just continue
23 avoiding any, hearing anything or discussing it with anybody.

1 A Right.

2 Q So much for pretrial publicity.

3 A Yeah.

4 Q Now let's talk about this issue with the death
5 penalty as a possible punishment. Looking at your
6 questionnaire -- well, you had indicated -- the first time
7 you learned this was a potential death penalty case was when?

8 A Oh, when I came into court April 8th.

9 Q Back on April 8th?

10 A Yeah.

11 Q Okay. About five weeks ago or so?

12 A Yeah.

13 Q And I noticed before that, you indicated you had
14 discussed the death penalty before that where you said it was
15 necessary sometimes, but rarely. Okay. You've taken a
16 position. When would it come up? I mean when cases came up
17 in the news, would you discuss it with family or friends or
18 people at work?

19 A Probably more just a general thing. You know.
20 Just --

21 Q Okay. Did you ever, back in school, did you ever
22 have to argue the death penalty?

23 A I don't think so.

1 Q Okay.

2 A That was a long time ago.

3 Q Okay. I mean when you say it came up as a general
4 thing, how do you mean?

5 A I don't know. Just not particular cases. Just a
6 general discussion of what people think. You know.

7 Q Okay. I mean did you follow along with --

8 A But as far as a particular case?

9 Q Okay. Or generally. It doesn't make any
10 difference. I mean whenever it came up.

11 A Just kind of general conversation. Not a heated
12 debate or anything like that. Just, you know, exchange of
13 thoughts.

14 Q Okay. How about when things happened like Oklahoma
15 City or 9-11?

16 A Not really.

17 Q Okay. You indicated that you're in favor of the
18 death penalty for premeditated murder and cases of extreme
19 brutality; right?

20 A That's, okay, that would be more like a, I guess I
21 always thought it was more of a case-by-case kind of thing.

22 Q Oh, okay.

23 A Not necessarily everybody, but -- and that's why

1 it's hard to talk about a particular case because you don't
2 know.

3 Q Okay. So if I understand what you're saying --

4 A That's just a general idea.

5 Q Right.

6 A And I really think it has to be something that you
7 decide case by case when you know all the details in the
8 case. So it's hard like what you said about the newspapers.

9 Q And that's the way Ohio law is written.

10 A Pretty much. Yeah. The way he stated it, I can
11 understand.

12 Q Because there's two separate hearings the way the
13 legislature writes the law.

14 A Yes.

15 Q In Ohio, we elect these folks, they go down to
16 Columbus and they pass the laws telling us what are crimes
17 and what the punishment range would be for each.

18 A Right.

19 Q And all killings aren't treated equally under the
20 law; okay? And there's a reason for it. For example, if
21 somebody was out chopping wood and the head of an ax flew off
22 and killed somebody, that would be an accident; right? And
23 you wouldn't expect anybody to be facing any type of

1 punishment; right?

2 A Yeah.

3 Q Most likely. No prison sentence or death penalty?

4 A Yeah.

5 Q And if somebody were driving down the road too fast
6 and went through a stop sign and killed a pedestrian, you'd
7 expect maybe a jail or a prison sentence for that person, but
8 not the death penalty; right?

9 A Right.

10 Q Okay. Or parking tickets? You wouldn't expect
11 death penalty for parking tickets?

12 A No.

13 Q Okay. And if two fellows were drinking in a bar and
14 they got in a fight and one fellow punched the other one and
15 the victim fell backwards and hit his head on the edge of the
16 bar and died as a result of that, that might be some type of
17 manslaughter case and you might expect maybe a jail or prison
18 sentence, but not a death penalty offense; right?

19 A Probably not.

20 Q Now, you understand the way the legislature has
21 written the law in Ohio, that if I go out and I premeditate a
22 murder, if I use prior calculation and design, let's say I
23 don't like my co-counsel's shoes. I say, "I'm sick and tired

1 of those shoes. If he wears them one more day, I'm gonna" --
2 and I go out to the courthouse steps at noon and I say, "If
3 Chris comes in tomorrow at 9:00 in the morning and he's
4 wearing those same shoes, I'm gonna blow him away with a
5 357."

6 And sure enough, he comes up those steps at 9 with
7 the same shoes, I shoot him with a .357. That would be a
8 killing with prior calculation and design. But you
9 understand in Ohio, the way the legislature has written the
10 law, just that by itself does not make him eligible, does not
11 make me eligible for the death penalty; okay?

12 The legislature says there has to be more.

13 A I understand.

14 Q There are these specifications of aggravating
15 circumstances, some extra bad facts that we have to prove.

16 A Right. I understand that.

17 Q Okay. And the legislature has set down a number of
18 factors or circumstances that could make a person eligible
19 for the death penalty. For example, I think the Judge
20 mentioned the killing of the president or the governor of the
21 state or the lieutenant governor or a police officer as a
22 victim or a young child or a mass murder where somebody kills
23 or attempts to kill two or more people, he could be eligible

1 for the death penalty, or when somebody engages in a special
2 felony, killings with prior calculation and design and
3 engages in an aggravated burglary or an aggravated robbery or
4 rape or kidnapping, certain types of crimes, a person could
5 become eligible for the death penalty too. And there are
6 other things too. Murder for hire. And on those types of
7 cases, it's not an automatic death penalty.

8 A Right.

9 Q Okay. Now, in Ohio, the cases tried in, that type
10 of case is tried in two different phases. The first phase is
11 a trial, just like any other criminal case, where the jury
12 makes its determination without any concern for any type of
13 punishment. Okay? And we'd have, we have the burden of
14 proving the elements of the crime charged, the essential
15 component parts of the crime, like the ingredients of a
16 recipe. Like if you're baking a chocolate cake, you've got
17 to put in all the ingredients, including the chocolate.
18 Okay? And we've got to bake a number of cakes here. But
19 let's say we got to prove the elements of the crime charged
20 beyond a reasonable doubt of aggravated murder and one or
21 more of these specifications of aggravated circumstances.

22 There are two of those circumstances.

23 A Uh-huh.

1 Q One is that the aggravated murder was committed with
2 prior calculation and design and during the course of an
3 aggravated burglary, and the other is a specification that
4 the aggravated murder was committed with prior calculation
5 and design during the course of an aggravated robbery, as
6 opposed to an aggravated burglary.

7 Okay? So if we prove the aggravated murder and one
8 or both of those specifications, we would then move on to a
9 second phase.

10 Now in the first phase, the issue of punishment,
11 what's appropriate punishment, would not be appropriate to
12 the first stage; right?

13 A Right.

14 Q It's not relevant so you wouldn't expect to hear
15 anything like that in the first phase; right?

16 A (Nods head.)

17 Q So let's say we've met our burden in the first
18 phase. We go into a second phase.

19 Now, in the second phase, you've already determined
20 guilt beyond a reasonable doubt.

21 A Uh-huh.

22 Q So that's all over and done with. Okay? In this
23 second phase, the issue is what's the appropriate punishment

1 for this defendant for this crime? And you'd have to do a
2 balancing test. And to sit on this jury, there are number of
3 things you'd have to do. First, you have to be able to
4 consider the issue of appropriate punishment. And there's
5 the aggravating circumstances that you would have found from
6 the first phase in the case that could be placed on one side
7 of an imaginary scale. On the other side of this imaginary
8 scale would be mitigating factors. Now, you wouldn't have
9 had the opportunity to hear about these most likely in the
10 first phase. The proper place for these is in the second
11 phase where the defense has an opportunity to present
12 evidence of mitigating factors.

13 A Uh-huh.

14 Q And a mitigating factor is a fancy word. It just
15 means certain facts that are favorable to a defendant and
16 would work against the death penalty as a punishment. And we
17 don't know what they are at this point because it's not
18 relevant, but it would be like the two guys drinking in a bar
19 and they were both drunk or something like that.

20 A I understand.

21 Q It could be different things that you would
22 consider. And you have to be able to consider these things
23 to sit on this jury. Now, how much these things weigh that

1 you're gonna put on the scale, that's entirely up to you and
2 the other eleven jurors. You might decide that something has
3 a whole lot of weight, that it weighs maybe 20 pounds or
4 maybe a ton. And on the other hand, something else, you may
5 decide, may weigh about as much as a feather. Okay?

6 Now, to sit in the second phase, you have to be able
7 to start out considering the four possible punishments here
8 equally. Okay? The death penalty, life in prison without
9 any parole eligibility, life in prison with parole
10 eligibility after 30 full years and life in prison with
11 parole eligibility after 25 full years. Okay? They all
12 start out equally in your mind.

13 A Uh-huh.

14 Q Okay? You may have personal preferences, personal
15 feelings for certain types of crimes, but you have to be able
16 to set those personal feelings aside and follow the law that
17 the Judge is gonna give you. You'd be able to do that?

18 A Yeah. I believe I would.

19 Q Okay. Now, if we, the people of the State, prove to
20 your satisfaction beyond a reasonable doubt so that you're
21 firmly convinced of the truth of the charges to a moral
22 certainty using your reason and your common sense, tests that
23 you use in your every day life, okay, then if we prove that

1 the aggravated circumstance or circumstances outweigh the
2 mitigating factors beyond a reasonable doubt, then you would
3 return a verdict as to the death penalty because it would be
4 the appropriate punishment under Ohio law; okay?

5 If we don't meet this burden of proof and we don't
6 convince you and the other jurors beyond a reasonable doubt
7 that the aggravating circumstance or circumstances outweigh
8 the mitigating factors, then you ignore the death penalty and
9 you go on to consider the other three life punishments, okay,
10 and decide which one is the most appropriate for this
11 defendant.

12 Okay? You don't have any problem with that?

13 A No.

14 Q Okay. Now, if we convince you beyond a reasonable
15 doubt that the defendant is guilty in the first phase of
16 aggravated murder and one or more of the specifications,
17 would you be able to sign that verdict form finding her
18 guilty, knowing that it would then make her eligible for the
19 death penalty in the second phase?

20 A Yes.

21 Q Okay. And let's say we get to the second phase and
22 we can convince you beyond a reasonable doubt that the
23 aggravating circumstances outweigh the mitigating factors so

1 that the death penalty is the appropriate verdict. Would you
2 be able to sign a verdict form for the death penalty?

3 A Yes.

4 Q Okay. And if you returned a death penalty verdict
5 and the Judge asked you in open court, "Is this your
6 verdict," would you be able to say yes?

7 A Yes.

8 Q Okay. Now --

9 THE COURT: Mr. Bailey.

10 MR. BAILEY: Your Honor.

11 THE COURT: It's noon.

12 MR. BAILEY: You want to break for lunch?

13 THE COURT: Yeah. We probably should

14 because the deputy has to take the defendant over for lunch
15 and all we're doing is postponing the thing.

16 MR. BAILEY: Okay.

17 THE COURT: So if you don't mind, let's do
18 that; okay?

19 JOANNE M. BATES: Okay.

20 THE COURT: You may want to go get a bite
21 too.

22 MR. BAILEY: See you in an hour.

23 THE COURT: Be back here at 1:00.

1 (Whereupon, a recess was had commencing at 12:03 p.m. and
2 concluding at 1:05 p.m.)

3 THE COURT: Hello again.

4 JOANNE M. BATES: Hi.

5 THE COURT: Okay. Mr. Bailey was engaged
6 in the questions.

7 MR. BAILEY: Okay.

8 Q (By Mr. Bailey) Where was I? We were talking about
9 the death penalty. And you understand the death penalty is
10 not an automatic punishment?

11 A Yes, I do.

12 Q If she's found guilty in the first phase, you've got
13 to be able to consider that stuff in the second phase.

14 Now, you had, I believe you indicated your friend
15 had been the victim of a crime?

16 A Yeah.

17 Q Okay. That wouldn't, the facts here --

18 A No.

19 Q -- are totally different?

20 A No. It's a totally different case.

21 Q You'd be able to set that aside and make your
22 decision based on whatever the facts and testimony and
23 evidence that are in this case?

1 A (Nods head.)

2 Q You're Protestant. Does your church have any
3 holdings for or against the death penalty?

4 A I don't actually know.

5 Q Okay. So that wouldn't affect you in any way?

6 A I don't think so.

7 Q Okay. You had mentioned on your questionnaire,
8 there was a question about what are the major problems facing
9 the criminal justice system today and you wrote down that
10 people don't think for themselves when they're on a jury.
11 What did you mean by that?

12 A What did I mean? I think sometimes we're swayed by
13 what we hear on the news a lot, I think they have
14 preconceived ideas, and I don't think people think enough for
15 themselves period I guess.

16 Q Okay. Okay. Let me get to some regular, regular
17 questions here. Well, I had mentioned that the defendant was
18 charged here, maybe I didn't mention it, but the defendant is
19 charged with a number of charges. Okay. But she's charged
20 not as the trigger person, but rather as a complicitor.

21 A Okay.

22 Q A complicitor basically is somebody who solicits or
23 procures another person to commit a crime or aids and abets

1 another person to commit a crime. In other words, the
2 defendant is charged with planning with another person or
3 strengthening, encouraging, helping in some way, a fellow by
4 the name of Nate Jackson in the killing of the defendant's
5 ex-husband with whom she lived for insurance money.

6 And the charge is that this Nate Jackson, who
7 actually committed the aggravated murder, that he trespassed
8 into the victim's house and that he stole a vehicle that
9 belonged to the victim, that the victim used, and that the,
10 that this Nate Jackson used a firearm, a working gun; okay?

11 A Okay.

12 Q But the defendant is charged as a complicitor, not
13 the trigger person.

14 A Okay.

15 Q Under Ohio law, she, if we can prove that beyond a
16 reasonable doubt, she becomes eligible for the death penalty
17 if we can prove the aggravated murder with specifications.
18 The fact that she's charged as a complicitor rather than the
19 principle or the trigger person, does that bother you in any
20 way so that you wouldn't be able to return a verdict --

21 A No.

22 Q -- as to the death penalty or of guilty in the first
23 phase if we prove our case beyond a reasonable doubt?

1 A Does that bother me? No.

2 Q Okay. The fact that she's a woman rather than a
3 man, does that bother you in any way?

4 A No.

5 Q Okay. Now, these crimes, the defendant is charged
6 with two counts of aggravated murder with these
7 specifications, these special findings of fact of aggravating
8 circumstances and with a count of aggravated burglary,
9 aggravated robbery and attached to those two counts are
10 firearm specifications, special findings of fact that a
11 working gun was used.

12 Each of these crimes and each of these
13 specifications is composed of certain elements, like the
14 ingredients in a cake. And we got to bake all of those
15 particular cakes and you've got to consider each of those
16 cakes or crimes separately. Okay? If we don't meet our
17 burden of proving all the elements and each charge beyond a
18 reasonable doubt, consider each one separately and return a
19 not guilty; right?

20 A I understand.

21 Q If we do meet that burden, you return a guilty.

22 These elements, the Judge is going to instruct you
23 as to these elements in great detail at the end of this case,

1 and you're bound by his instructions and the definitions that
2 he's gonna give you, but I'm gonna give you a for instance,
3 okay, an example --

4 A Uh-huh.

5 Q -- of what the elements are.

6 Let's take the crime of aggravated murder with prior
7 calculation and design. And I should explain. The defendant
8 is charged with two counts of aggravated murder. There's
9 only one person who was killed, but there are two counts, two
10 separate theories that under Ohio law the State is allowed to
11 pursue and have the jury consider, okay, and we've elected to
12 do that because we're allowed to do that. There's one count
13 of aggravated murder with prior calculation and design and
14 one count of aggravated murder charging it occurred in the
15 course of another special felony like aggravated burglary
16 and/or aggravated robbery.

17 Now, let's take the crime of aggravated murder with
18 the prior calculation and design. One of the elements might
19 be that we have to prove that it happened on or about a
20 certain date, on December 11th, 2001.

21 The second element would be that it happened here in
22 Trumbull County, Ohio. We call that venue. And the reason
23 we have to prove this venue, that it happened here in the

1 county, is so we can try the case in this courthouse rather
2 than up in Tuscarawas -- or down in Tuscarawas or up in
3 Ashtabula or some other place.

4 The third element might be identification. That the
5 person who committed the crime is the same person who is
6 sitting there, and somebody would have to point her out.

7 The fourth element would be that she acted
8 purposely. The Judge will define that term, but it basically
9 means on purpose.

10 Fifth, she caused the death of a living person as a
11 complicitor. In this case, a fellow by the name of Robert
12 Fingerhut.

13 And sixth, that she acted with prior calculation and
14 design. Now this term, prior calculation and design, has a
15 specific meaning that the Judge will define for you, but
16 basically it's, it requires advanced planning and a studied
17 scheme to cause the death of another.

18 It used to be, we used to have a term called
19 premeditated murder in Ohio law. They changed that to this
20 prior calculation and design.

21 Let me give you an example. Let's say I take my pen
22 and I drop it and I catch it, just barely, but I catch it.
23 Okay. That might be a reflex.

1 Let's say I drop my pen and I say, "Oh, my goodness.
2 I've got to bend down and pick it up," and I do that. That
3 would be some advanced planning; right?

4 Now, this prior calculation and design, this studied
5 scheme to kill, let's say I tell my co-counsel, Chris Becker,
6 yesterday, "Chris, I need an example to demonstrate this
7 term, prior calculation and design and the studied scheme, so
8 I'm gonna take my pen tomorrow when I get into court and drop
9 it so I can pick it up."

10 Okay? And I do that. Well, I planned it in advance
11 and it was part of a studied scheme to pick up my pen. So
12 that would be prior calculation and design; right?

13 So those are basically elements. Those six things
14 are the ingredients of the cake that we got to bake.

15 Now, it may well be that you have some questions
16 that never get asked or answered. Let's say you have a
17 special interest in, I picked shoes on him before. Let's say
18 you sold shoes and you wondered what people wore when they
19 did different things because that was your special interest.
20 Like people who are chefs may wonder what people ate at
21 different times during the course of the proceedings, but if
22 it's not relevant to proving the elements of the crimes
23 charged, that type of question might never get asked or

1 answered. Okay? And if we can convince you beyond a
2 reasonable doubt of these elements of the crimes charged,
3 you'd be able to return a conviction, in spite of the fact
4 there may be some unanswered questions like, you know, that
5 wouldn't pertain to the elements; right?

6 A (Nods head.)

7 Q Okay. Now, the term aggravated burglary and
8 aggravated robbery, sometimes people who are not trained in
9 the law interchange those terms. People might say, "Well,
10 gosh, my house just got robbed," when they really mean that
11 it really got burglaried.

12 This term, aggravated burglary, refers to a
13 situation generally where a perpetrator trespasses in another
14 person's house, an occupied structure we call it in the law,
15 the dwelling house of another. And they go in with the
16 purpose to commit some type of offense, whether it's an
17 aggravated murder or a theft offense or something, and the
18 perpetrator could be armed with a deadly weapon, like a gun
19 or a knife, and the perpetrator can cause serious physical
20 harm or death to the victim inside. Okay. That might be
21 aggravated burglary.

22 There's another crime called aggravated robbery
23 which does not require the structure. There's no occupied

1 structure involved. No dwelling house. And basically that
2 involves the perpetrator who uses force or threat of force
3 against another person to commit an offense, they steal
4 something, and the perpetrator could be armed with a deadly
5 weapon like a knife or gun and the perpetrator can cause
6 death or serious physical harm to the victim. Okay.

7 A Yeah.

8 Q So there are these two crimes. And the term firearm
9 basically means a working gun. It's a complex legal
10 definition that talks about the use of combustion or
11 explosive to propel a projectile. It means pulling the
12 trigger and a bullet comes out; right?

13 A Right.

14 Q Okay. Now, and if I remember, you're familiar with
15 firearms because you've got a handgun and a shotgun that you
16 use to hunt and maybe for target practice; right?

17 A (Nods head.)

18 Q Okay. So nothing magical about that?

19 A No.

20 Q Okay. Now, let's talk about some regular stuff.
21 The burden of proof is always on us, the people of the State.
22 And the burden is to prove these elements of the crimes
23 charged. If we don't meet it, then you find the defendant

1 not guilty. If we do meet our burden of proof beyond a
2 reasonable doubt, then you find the defendant guilty.

3 Now, you understand the defendant has no burden of
4 proof? That burden never shifts. The burden is entirely on
5 us, the people of the State. The defendant and the defense
6 team there can sit on their hands for the course of the
7 trial. They're not gonna do that because they're very
8 experienced. They're gonna ask questions, but you understand
9 they don't have to do anything under our system of justice?
10 The burden is totally on us. And that's because there is a
11 presumption of innocence in our American system of justice,
12 unlike some other countries, like France or Turkey.

13 A Uh-huh.

14 Q The presumption goes the other way. There's a
15 presumption of guilt maybe in those countries, okay, where
16 the defendant would have to get up and do something, but
17 that's not our system of justice. You understand that under
18 our system, the defendant is presumed to be innocent, as are
19 all other defendants tried in this courtroom, and that
20 presumption of innocence acts like a cloak shielding her all
21 through the course of this trial unless and until we put on
22 all the testimony and evidence, the Judge has instructed you
23 under the law and you and the other eleven jurors go back

1 into the jury room to deliberate. And at that point, if you
2 find we proved the elements of the crime charged beyond a
3 reasonable doubt, if you find the defendant guilty, at that
4 point, that presumption of innocence would be gone; right?

5 A Right.

6 Q And you agree with this presumption of innocence;
7 right?

8 A Right.

9 Q I mean it's important as American citizens --

10 A Absolutely.

11 Q -- that we have this presumption?

12 A I understand.

13 Q Now, we have to prove our case, the elements of the
14 crimes, by proof beyond a reasonable doubt. And the Judge
15 will give you a detailed definition of that term, everything
16 has got a definition under the law, but basically, I think I
17 mentioned before, that it's when we convince you, firmly
18 convince you of the truth of the charge to a moral certainty
19 using your reason and your common sense. It's like we talked
20 about buying a house?

21 A No.

22 Q We didn't talk about buying a house yet?

23 A I don't think so.

1 Q Okay. You make decisions in your daily life. You
2 make a decision to get married, you make a decision to buy a
3 house. You guys, you own your own home?

4 A Uh-huh.

5 Q You make a decision whether to take a job or leave a
6 job or have children; right?

7 A (Nods head.)

8 Q These are all major decisions in your lifetime, to
9 buy a car, and what you do is you list the pros and cons
10 basically and then you use the tests that you use in your
11 every day lives using your reason and common sense. You may
12 have some questions about some things, but you determine
13 whether they're reasonable doubts or not.

14 Like buying a house. There may be some problems
15 with the foundation. You look at a bunch of houses; right?
16 I know when my wife and I went out to buy a house, we
17 probably knew everything that was in the neighborhood, the
18 whole area, of what all the prices were and what the interest
19 rates were, which houses had water problems, which didn't
20 look structurally sound, we had the house inspected, all
21 these types of things. You look at the roof. Is the living
22 space, is the layout right, is it close to the school system,
23 is it going to gain any value hopefully? All these types of

1 things. And then on your checklist, when you get rid of all
2 the reasonable doubts, if they're all gone and there's
3 nothing left that's reasonable, you may have some doubt, but
4 if they're not reasonable doubts --

5 A Right.

6 Q -- then they don't count; right?

7 And then if you're firmly convinced using your
8 reason and common sense it's the right thing to do, you go
9 ahead and decide; right?

10 A Right.

11 Q At some point, you did, you bought a house; right?

12 A Right.

13 Q Okay. And it's the same thing here. It's just,
14 this is sort of like buying a house.

15 You understand that, well, let me give you an
16 example. It's like an imaginary box. Juhasz uses the
17 imaginary box so I'm going to steal his imaginary box for a
18 bit here. It's a box that we have to fill up with evidence;
19 okay? And because we have the burden of proof, we've got to
20 put evidence in. And if it were a civil case for money
21 damages, whoever fills that box just over half way is gonna
22 prevail on a civil case. In a criminal case, it's different.
23 We have the highest burden in the law. We don't have to fill

1 the box up all the way to the top. We got to come pretty
2 darn close to the top, though. Maybe within an inch or half
3 an inch of the top so that you are personally satisfied. You
4 and each of the other jurors can draw an imaginary line on
5 that box to where you feel we meet the test. It's not proof
6 beyond all doubt or beyond any doubt or beyond the shadow of
7 a doubt because nothing that is subject to human affairs can
8 be proven beyond all possible or imaginary doubt. Okay? So
9 the law doesn't require us to prove it all the way, a hundred
10 percent, just to the point where it's beyond a reasonable
11 doubt. Okay?

12 Now, do you understand because of the burden of
13 proof here and because of the presumption of innocence, the
14 defendant doesn't have to put anything into the box or take
15 anything out of that box? The burden is totally on us, the
16 people of the State, to fill that box; okay?

17 A (Nods head.)

18 Q And there are different types of evidence that we
19 can put into the box. There's direct evidence where a
20 witnesses comes in and testifies to what he or she has
21 learned through the use of his or her five senses. For
22 example, "I heard the gunshot and it was loud. I smelled the
23 smoke and it was acrid. I touched the calendar and it was

1 smooth."

2 Okay? And that's one type of evidence.

3 There's another type of evidence that is just as
4 good. It's sort of roundabout evidence that you're used to.
5 And that's where you're presented with a fact or series of
6 facts and you're asked to draw a logical deduction to another
7 fact or series of facts. That deductive reasoning we call
8 circumstantial evidence. Okay. I'll give you a for instance
9 to this. Let's say you live in the two-story house and your
10 bedroom is on the second floor and when you go to bed at
11 night, you look out your bedroom window. And you look across
12 your neighborhood and it's a beautiful night. The moon is
13 shining, the stars are twinkling, there's not a cloud in the
14 sky. As far as you can see across the neighborhood, it's
15 perfectly dry. Okay? So you draw the blinds, you get into
16 bed and just before you fall asleep, you have the radio on
17 low, you hear the announcer say, "Folks, there's a cold front
18 moving in. I expect we're gonna have a storm before
19 morning."

20 And you shut the radio off and you fall asleep. And
21 sometime during the night, you're awakened by a distant
22 booming sound in the sky and you look toward the window and
23 even though the blinds are drawn, you see like a flash of

1 light outside. And three or four seconds later, there's a
2 distant rolling boom in the sky. And maybe a minute goes by
3 and suddenly there's another flash of light outside. And a
4 second later, there's another closer boom in the sky. And
5 suddenly there's a big flash of light outside and right over
6 the house is a big ripping, cracking boom and a pitter patter
7 on the roof and then a steady drumming sound and you fall
8 back asleep. And then sometime later, you wake up, you go to
9 the window, you open the blinds, you look out, the sun is
10 shining, there's not a cloud in the sky, but where it was
11 perfectly dry the night before, the streets are running with
12 water, the rooftops are all wet as far as you can see, there
13 are drops of water dripping off the leaves of the tree and
14 there's no fireplug nearby for some car to hit it and spew
15 water up all over all the houses; right? So you know what
16 happened during the night. What happened?

17 A It rained.

18 Q Right. There was a thunderstorm, and you know that
19 based on the circumstantial evidence, even though you didn't
20 see that with your own eyes because the blinds were closed,
21 but based on everything you heard and could see, you know
22 there was a thunderstorm.

23 Now, there's room in there for some possible or

1 imaginary doubt. You can emergency that E.T. and his alien
2 buddies flew by in a flying saucer and sprinkled the ground
3 with some wet stuff and put on a sound and light show, but
4 that would be a foolish or imaginary doubt, wouldn't it?

5 A (Nods head.)

6 Q And there's a limitation to circumstantial evidence.
7 You might not know how long it rained because you were
8 sleeping. You might not know how much water fell during the
9 night and unless you went out to the airport and measured it
10 with their devices out there and they tell you how much fell
11 or how long it fell. But you know beyond any reasonable
12 doubt that there was just a thunderstorm as to what happened;
13 right? It's the same thing.

14 You understand that circumstantial evidence is just
15 as good as direct evidence? We can prove the elements of the
16 crimes charged using circumstantial evidence. Okay. You
17 don't have any problem with that?

18 A Right. I understand what you mean.

19 Q Okay. Now, you understand that there's a reason
20 that we use circumstantial evidence. We may have to use it
21 because oft times when people plan really serious crimes like
22 aggravated murders, they may not stand on the courthouse
23 steps at noon and tell the whole world what their intentions

1 are; right?

2 A (Nods head.)

3 Q Okay. So we have to look at all the facts and
4 circumstances. And if we have things like maybe letters or
5 phone calls where people are planning things to know what was
6 inside a person's mind to show their purpose, we would be
7 able to use things like that; right?

8 A Right.

9 Q Okay. Now, in spite of, and I take it you could
10 pile up evidence on evidence and make your own decision as to
11 if there's enough and follow what the Judge tells you?

12 A (Nods head.)

13 Q Okay. And you believe people should be held
14 accountable for their actions?

15 A Yes.

16 Q Now, you understand that in spite of all the
17 planning that criminals may do, they may engage in detailed
18 plans, sometimes criminals do some really stupid things so
19 they get caught; right? For example, you probably heard
20 about the cases where the robber goes into the bank and he's
21 got a holdup note and he hands it to the clerk on the back of
22 an envelope and it says, "Give me all your money," and the
23 clerk hands him the money, he runs out and the clerk turns

1 over the envelope, there's the guy's name and address. Okay?
2 And they catch him.

3 Or the burglar who climbs in through the bedroom
4 window and sneaks around and steals stuff, but he drops his
5 wallet and it's got all his identification and they find him
6 with the proceeds right after; right?

7 A Uh-huh.

8 Q So you understand that in spite of all the planning,
9 sometimes criminals do some stupid things and get caught.
10 Now, you can't take, you can't take -- do you ever watch
11 Court TV?

12 A A little bit.

13 Q A little bit? Well, they have cases from across the
14 country, different jurisdictions. And each state is
15 different in their procedures. And in some states, they let
16 jurors take notes, but in Ohio, generally our judges don't
17 let the jurors take any notes of the testimony of the
18 witnesses. And there's a reason for it. Our judges feel
19 that they want the jurors to pay close attention, to listen
20 to what's being testified to and to observe the witness's
21 demeanor. Okay? And people sometimes, when they take notes,
22 some people take better notes than others and somebody writes
23 one thing down and somebody writes another and they argue

1 about their notes and it would distract them from what the
2 testimony was. Okay? So generally judges do not let you
3 take notes.

4 Also, there aren't any instant replays on the
5 testimony like the sports games on TV. You've got to pay
6 close attention. The trial may last over a couple weeks
7 because we're only going like three and a half days a week
8 for three weeks. But you'll be, because there are twelve of
9 you on there, I'm sure you'll be able to recollect the
10 testimony if you pay close attention. There aren't going to
11 be any instant transcripts either. Unlike those
12 high-publicity trials like O.J. Simpson or the Menendez
13 brothers. We don't have the millions of dollars for the
14 instant transcribing devices in this county. We're hurting
15 financially in the county so we just don't have those. Our
16 court reporters are very good, but they can't do instant
17 transcripts. So if you ask for, you know, the testimony of
18 so and so, the answer is going to be no, you have to rely on
19 your collective recollection. You don't have any problems
20 with that?

21 A No.

22 Q Okay. Also, you can't go out to investigate on your
23 own. That sounds silly, but sometimes in TV programs like I

1 think it was a Matlock episode and there was a Hawaii 5-0
2 episode where they went out and there was a movie where the
3 juror went out and investigated the crime scene. We had that
4 happen in real life here once and it caused a mistrial and we
5 had to do it all over again.

6 A Yeah.

7 Q You don't want to do anything like that; right?

8 A No.

9 Q Because we don't want to do this over again; right?

10 A No.

11 Q Okay. Also, you're being picked as an alternate.

12 And sometimes folks say, "Gosh, I'm an alternate. It's sort
13 of like being the fifth wheel on a car."

14 Not true. We've tried numerous capital murder cases
15 over the years and there have been a number of times, more
16 than I care to think, where we've used all the alternates
17 because of family emergencies during the course of the trial
18 or people got sick during the course of the trial. So it's
19 very important you pay just as close attention to the
20 testimony as if you were sitting in that chair because you
21 might end up sitting in that chair. Hopefully nothing
22 happens to any of the jurors, but if it does, you know, you
23 may see alternates moving up as the trial progresses.

1 A Okay.

2 Q Another thing is, you're stuck with the questions
3 that the lawyers ask. On Court TV, sometimes it shows jurors
4 submitting questions to the judge to ask the witnesses. That
5 doesn't happen here in Ohio. Okay? And because we're
6 lawyers, we go to law school, we're trained to establish
7 elements of the crime or tear them down. Okay? And it may
8 well be that you have some questions, but you're stuck with
9 our questions. Okay? That's not gonna bother you?

10 A I don't think so.

11 Q As long as we prove the elements of the crime to
12 your satisfaction beyond a reasonable doubt?

13 A Right.

14 Q Sequestration. At the end of the first phase, after
15 all the testimony and evidence is in and the Judge has
16 instructed you on the law, you and the other jurors go back
17 in the jury room to deliberate. And at that point, you're
18 kept together. You're sequestered. If you don't reach a
19 decision by the end of the first evening, you're taken to a
20 motel or hotel and put up and they provide meals and all that
21 stuff. And you get advanced notice so you know to pack
22 stuff. Each jury is different. And I don't know how long
23 it's going to take. Nobody can predict that. I've had

1 juries in capital murder cases return first-day verdicts
2 within an hour and a half and some juries take up to five
3 days. Because each case is different, there are different
4 numbers of exhibits to look at. So you take however long it
5 takes.

6 If you and the other jurors return a verdict of
7 guilty of aggravated murder beyond a reasonable doubt with
8 the specifications, we move to a second phase. And there
9 will probably be a break in-between, maybe a couple of days
10 or maybe a week. The second phase generally takes one to
11 three days and then you are instructed on the law and you are
12 sequestered again. Okay. And again, that depends on, each
13 jury is different.

14 The two sequesterations, is that going to cause you
15 any undue hardship?

16 A No.

17 Q Okay. Do you have any questions that have come up
18 during the course of these proceedings?

19 A Not really, no.

20 Q Okay. Now, sympathy, I know it's normal for one
21 human being to feel sympathy for another human being, but can
22 you set aside any sympathy you might feel for the defendant
23 and base your verdict on the testimony and evidence that you

1 hear and the instructions of law given to you by the judge
2 and set aside any sympathy that you might have for the
3 defendant?

4 A Yes.

5 Q Okay. Thank you.

6 Now, I think you'd agree that there are certain
7 obligations that we have as citizens in this country. One of
8 those is, if it's election time, we've got an obligation to
9 bone up on the issues and candidates and cast a ballot, and
10 that's how most folks get here is because they're voters.

11 A Yeah.

12 Q And there's another obligation. If it's wartime,
13 we've got an obligation to serve in the military if we're
14 called. As a matter of fact, we've got young people overseas
15 now in different countries doing their duty.

16 There's another obligation of citizenship. When
17 you're summonsed in to appear to serve as a juror on a case,
18 you never know what case it's going to be, but to make sure
19 our American system of justice works, it's important we get
20 folks from all walks of life with all kinds of experiences
21 and especially in a case like this, a criminal case, the most
22 serious of criminal cases, it's important that we get folks
23 who can serve on this jury. Would you be willing to

1 undertake that obligation of citizenship, even though you got
2 to jockey things around in your daily life?

3 A Yes.

4 Q Okay. That's all we can ask. You have no questions
5 of me?

6 A No.

7 MR. BAILEY: Okay. Now I'm done. Defense
8 counsel is gonna have an opportunity to address you.

9 JOANNE M. BATES: Okay.

10 THE COURT: Gentlemen.

11 MR. JUHASZ: Thank you, Your Honor.

12 **EXAMINATION BY MR. JUHASZ:**

13 Q Miss Bates, how you doing?

14 A Okay.

15 Q Do you need some water or something?

16 A No. I'm good.

17 Q Tell you what I'm gonna do before I start talking to
18 you. I remembered at lunch that I turned on my cell phone
19 and if I don't turn it off, it's going to go off at some
20 point during court today. That's the kind of luck I have
21 with cell phones.

22 My name is John Juhasz. My friend, Gerry Ingram,
23 and I are representing Donna Roberts who, as you know, is on

1 trial for her life. We take the responsibility of
2 representing her seriously, as I imagine you would think that
3 we would. And because of that, that's why we engage in this
4 process of, this lengthy process of asking you questions to
5 try and get a fair and impartial jury.

6 A Right.

7 Q The same kind of jury you would probably want if you
8 were sitting over there or a family member?

9 A Right.

10 Q Make sense to you?

11 A Uh-huh.

12 Q You've had a lot of time to think about it since you
13 were first called in on April the 8th and learned that this
14 was a capital case. And I'm curious if you have any thoughts
15 about taking on the responsibility of potentially being a
16 juror in this case. Have you thought about that?

17 A Yeah.

18 Q Can you tell me what you've been thinking?

19 A What have I been thinking? That somebody has to do
20 it and that it actually comes at a time when I'm, don't have
21 a lot of things that would interfere. And I think I can be
22 impartial. Let's see. What else? I would try to be the
23 kind of juror that I would want if I was there.

1 Q Okay. You think you can be the kind of juror that
2 you would want if you were sitting over there?

3 A Yeah.

4 Q As we talk this afternoon, lawyers have a tendency,
5 either by training, experience or some combination of the
6 two, to monopolize conversations. And I will certainly try
7 to keep this moving so we can finish this process and get you
8 out of here. But I want you to understand that I am
9 interested in what you have to say more than what I have to
10 say. Gerry likens this process to a job interview. And as
11 you know, at a job interview, first of all, there's a
12 difference which is that you didn't apply for the job, you
13 got a notice to come here. But there's a similarity in that
14 in the job interview, the prospective employer is looking at
15 you to see if he or she is comfortable hiring you and you're
16 also looking at the place that you're gonna work. So, you
17 know, we're interested in talking to you and finding out your
18 views, but we're also interested that if you have views that
19 you maybe discover at some point you are not comfortable
20 sitting on this case. And I don't want you to be reluctant
21 about saying that if that's how you feel.

22 You, as I understand it, did not know anything about
23 this case?

1 A No.

2 Q Okay. Aside from, you read the Tribune every day,
3 right, and then you get your TV news from Cleveland because
4 of where you live?

5 A (Nods head.)

6 Q Did you hear the case, when you were down either on
7 the 8th of April or since you've been here today, have you
8 heard any discussions about Donna Roberts or the case or
9 anything like that?

10 A No, I really haven't.

11 Q All right. You know, I'm sure from what the Judge
12 has told you and what Mr. Bailey has told you that the basic
13 allegations against Donna by the government are that she and
14 a fellow by the name of Nate Jackson, is that a name that you
15 knew or did not know?

16 A No, I didn't.

17 Q That Donna and a fellow by the name of Nate Jackson
18 planned or plotted or conspired or whatever word you want to
19 attach to that to kill Robert Fingerhut. Robert and Donna
20 had been married at one time. They divorced, but after they
21 divorced, they continued to live together in Howland Township
22 and to work together at the Youngstown Greyhound bus stations
23 -- I didn't say that right. The Youngstown and Warren

1 Greyhound bus stations. Forgive me. Any of that ringing a
2 bell with you?

3 A It's not, really.

4 Q All right. You may hear during the course of this
5 trial some things that make you believe that Mr. Jackson was,
6 in fact, involved in Mr. Fingerhut's death. But you
7 understand that this case is about one person and one person
8 only, and that's Donna Roberts; do you appreciate that?

9 A Right.

10 Q So even if you are convinced that he is guilty as
11 sin, he being Mr. Jackson, of whatever you hear in this case,
12 that's not necessarily proof that she was involved; do you
13 see that?

14 A Yes.

15 Q The government is going to have to prove to you, if
16 they can, by proof beyond a reasonable doubt that she did
17 something to help Mr. Jackson. And are you comfortable
18 holding them to that burden?

19 A Yes.

20 Q In their efforts to do that, to convince you that
21 Donna was somehow involved in helping Mr. Jackson, they will
22 likely produce for you letters she has written and recorded
23 telephone conversations between Donna and Mr. Jackson. I

1 will tell you that some of those letters and telephone
2 conversations are sexually explicit and many people,
3 honestly, would find them to be offensive in places. Now, I
4 bring that up for this reason. You may find, as a result of
5 evidence you hear in this case, that you don't like very much
6 what she has said in these letters or these tapes, but you
7 appreciate, don't you, that that doesn't substitute for
8 evidence about whether she helped Mr. Jackson?

9 A Yes.

10 Q Do you see that?

11 A Yes, I see that.

12 Q You could very easily walk out of this case saying
13 to yourself, "You know what, I know this trial wasn't about
14 Nate Jackson, but I'm convinced he was involved in
15 Mr. Fingerhut's death."

16 You may also say to yourself, "She's not somebody
17 I'd like to meet or talk to outside of this room because of
18 things she has written or said, but nevertheless, they didn't
19 connect them by proof beyond a reasonable doubt."

20 Do you see how that could happen?

21 A Yes.

22 Q And those are three separate and distinct inquiries.
23 And you can keep them separate?

1 A (Nods head.)

2 Q Even though you don't know about it, there has been
3 some publicity about this case. And sometimes jurors look at
4 me a little funny when I ask this question, but I'll tell you
5 in a second why I ask it. Given the fact that there's been
6 some publicity, if you find that the State doesn't meet its
7 burden of proof and doesn't prove Donna's participation in
8 this homicide by proof beyond a reasonable doubt, would you
9 have any reluctance to vote not guilty?

10 A No.

11 Q Okay. I ask that because sometimes on radio talk
12 shows and things like that, the people who call in, sometimes
13 the hosts like to sort of second guess what juries do. And
14 you appreciate, of course, they're not here. You're here.

15 A Right.

16 Q But we do want to make sure that jurors aren't
17 worried more about what Ron Verb thinks than what's the right
18 thing to do.

19 A Right.

20 Q You're not one of those people; correct?

21 A I don't think so.

22 Q All right. The Judge mentioned to you quite
23 correctly that we are going to talk to you about your views

1 about the death penalty. And in doing that, it's not our
2 purpose to change your views about the death penalty, simply
3 to find out what they are and to see if those can or cannot
4 be squared with sitting on a case like that; does that make
5 sense to you?

6 A I understand.

7 Q All right. Before we talk about that, though, you
8 have been given a handout, Judge Stuard has talked to you a
9 little bit, Mr. Bailey has talked to you at some length and
10 I'm up here talking to you now. All of us are talking to you
11 about the potential of the death penalty and yet you have not
12 heard one piece of evidence that Donna is even involved;
13 right?

14 A Right.

15 Q I bring that up because obviously as one of Donna's
16 lawyers I have a concern that jurors might think, they're
17 talking about the death penalty right and left here, she must
18 be guilty; do you have any thoughts like that?

19 A No.

20 Q All right. You appreciate, don't you, that we have
21 to talk about everything that could potentially come up in a
22 case like this at the beginning?

23 A I understand.

1 Q All right. You are very soft spoken.

2 A I'm sorry.

3 Q And so even though I was straining to hear your
4 answer, there's something I want to ask you about before we
5 talk about the death penalty, and that's the answer that you
6 gave about the criminal justice system. People don't think
7 for themselves when they are on a jury. And I tried very
8 hard to hear what you said and I couldn't. I apologize.

9 A Oh, I think that they let the news media sway them
10 and I just think people listen to other people too much
11 instead of making up their own mind in general.

12 Q Okay. One of the things that sometimes we ask
13 jurors is that, maybe no one has even told you this, so let's
14 take a second and talk about it. In this case, a jury of
15 twelve would have to decide something by a unanimous vote.
16 Did you know that or did you not know that?

17 A I didn't know it for sure.

18 Q All right. That means that if the jury finds
19 somebody guilty, all twelve of them have to agree. And if
20 they find somebody not guilty, all twelve of them have to
21 agree. And similarly, if you get to a second phase, if they
22 are going to vote to impose the death penalty, all twelve of
23 them have to agree to do that. Now, here's my point about

1 that in connection with what you said. You never know what's
2 gonna happen in this world, as I'm sure you know.

3 A Right.

4 Q You may find yourself in a situation back in the
5 jury room where even though all twelve of you sat and heard
6 the same evidence, when you get back there and start talking
7 about it when it's time to deliberate, you're going, "I don't
8 know where these other people are coming from, but I didn't
9 see it like that at all."

10 And you could end up being a, in essence, a one vote
11 with eleven on the other side of you. And it doesn't matter
12 for present purposes whether you're voting guilty and they're
13 all voting not guilty or vice versa.

14 I've never been on a jury, but I've talked to plenty
15 of jurors, and that's an uncomfortable experience. You
16 strike me from the, from the follow-up that you've given me
17 to that answer that if you find yourself in that position you
18 will not honestly surrender your convictions just to get the
19 world's work done and get on with this case.

20 A No, I wouldn't.

21 Q Okay. And I'm gonna read into your answer and if
22 I'm, if I say something that's not accurate, please tell me,
23 that if whatever verdict the jurors are contemplating coming

1 up with, somebody says, "We can't do that, we'll get
2 crucified in the media," that you're a person who is gonna
3 sort of say, "What's wrong with you people?"

4 A Pretty much.

5 Q "We have to judge this based upon the evidence."

6 A Yes.

7 Q Is that right?

8 A Yes.

9 Q Okay. Like many people we talk to, your views seem
10 to be that the death penalty is appropriate for some offenses
11 and inappropriate for others; is that a fair statement?

12 A Yeah.

13 Q This is one of those points where I'm more
14 interested in what you have to say than what I have to say.
15 Can you elaborate a little bit for me, and I appreciate you
16 told Mr. Bailey.

17 A Uh-huh.

18 Q And I'm not gonna try to pin you down to, well, if I
19 gave you these facts, would you vote for the death penalty or
20 not the death penalty. I understand you can't do that. I'm
21 more interested in your general thoughts about the death
22 penalty. Well, let's start with that and then I'll ask you
23 some other questions.

1 A Okay. I'm not opposed to it. I just think it
2 should be rare.

3 Q It should be rare?

4 A Yeah. I think it would, yeah, it takes a lot to
5 come back with the death penalty.

6 Q Okay.

7 A The exact circumstances, I don't know. That would
8 be on a case by case.

9 Q Understood. One of the things, of course, as I
10 think you know from the handout and maybe from some of the
11 things Mr. Bailey has said and Judge Stuard has said, if you
12 get to a second phase, whether it's this case or any other
13 capital case in Ohio, the government has a separate burden of
14 proof?

15 A Right.

16 Q Completely different than what they had at the first
17 phase; do you understand that?

18 A I understand that.

19 Q Mr. Bailey stole my box. He was talking to you
20 before about my box. He stole my box. He's been doing that
21 for five weeks and I'll get even. But for present purposes,
22 what I want to find out is the government has a box to fill
23 at the second phase of a capital case if you ever get there

1 and they have to fill it with proof beyond a reasonable doubt
2 that the reason or reasons to impose the death penalty
3 outweigh all the reasons not to impose the death penalty; you
4 know you know that, right?

5 A Yeah.

6 Q I'm judging from your answers because of what you
7 said about it's something that should be rarely and carefully
8 done, that that box is gonna start out empty for you at the
9 second phase? There's nothing about how you feel about the
10 death penalty that sort of puts something into that box, or
11 is there?

12 A No.

13 Q Does it matter to you what the offense is? And let
14 me, let me narrow that down a little bit. Does it matter to
15 you what type of murder it is? In other words, some people
16 have said to us, "Well, if it's a child. Well, if it's
17 premeditated. Well, if it's cold-blooded."

18 Do any of those things make you change what you've
19 just said about carefully considering the death penalty at
20 the second phase?

21 A Okay. You'd still have to start from scratch.

22 Q Yes. But -- and here's why I ask you, and I'm
23 trying to walk the line here between not feeding you answers

1 to find out how you feel.

2 A Okay.

3 Q But also I'm trying not to give you any trick
4 questions.

5 A Okay.

6 Q Some people, because of how they feel about the
7 death penalty, if it's a certain type of offense, if sort of
8 has a leg up going into the second phase. Okay? You know
9 how the Judge and I think Mr. Bailey both told you that if
10 you get to a second phase, all four of those sentencing
11 options have to start out equally in your mind?

12 A Right.

13 Q And will they do that for you?

14 A Yes.

15 Q Okay. My question is, and again, I'm not trying to
16 trick you, but I'm also trying not to feed you the answers
17 because I want to hear what you have to say, is some jurors
18 have told us that, well, if it's a child murder, the death
19 penalty has a leg up for me and so they don't really start
20 out equally for me. The defendant has to talk me out of
21 giving the death penalty in a situation like that. And I'm
22 interested in finding out if you feel like that about any
23 type of homicide. Is that a clearer question? I know it's

1 hard because --

2 A Yeah. Because it doesn't really apply. I think
3 it's such a serious thing to give someone the death penalty,
4 I think you have to prove that it's necessary.

5 Q Okay. So I guess the answer to my question would
6 be --

7 A Would be that, no, I don't think I would lean
8 towards ever favoring it.

9 Q Okay. That -- and if I didn't make myself clear,
10 what I'm trying to suggest to you is some people have said,
11 for example, "If I found somebody guilty of murdering a child
12 at the first phase, the death penalty -- and I went to the
13 second phase, the death penalty would have a leg up."

14 The four options wouldn't start out equally. And
15 instead of the State filling up the box, the defendant would
16 have to take stuff out of the box?

17 A Right.

18 Q Okay?

19 A I understand what you're saying.

20 Q All right.

21 A I don't feel I would be that way.

22 Q That's what I want to make certain of. Thank you.

23 Couple more hard questions about the death penalty

1 and then we'll be done with it. Can you tell me how you feel
2 about life imprisonment as an alternative, as a sentence
3 alternative to the death penalty?

4 A (No response.)

5 Q Hard question. I know.

6 A Yeah. I'm not sure exactly what you mean.

7 Q All right. Is there anything about life
8 imprisonment, some people think that if you kill somebody,
9 well, some people think an eye for an eye.

10 A No.

11 Q Some people have a modified version of an eye for an
12 eye and they think that if you killed somebody and you
13 planned it or whatever the circumstances are, that life
14 imprisonment really isn't much of a punishment.

15 A Oh, okay.

16 Q You know. They got weights down there and they can
17 exercise and they have TV. It's not really much of a
18 punishment.

19 A No. I don't feel that way. I feel life in prison
20 is a viable punishment for --

21 Q All right. I want to make certain that you
22 understand, I think you do, but I want to make certain that
23 you understand, because many jurors don't, you do understand

1 that life imprisonment without parole means just that?

2 A Yeah.

3 Q There are no tricky lawyer things, well, yeah, I
4 know we told the jury that, but there's good time and they
5 get a super special chance at parole. You go in, you come
6 out in a box; you appreciate that?

7 A Right. I understand that.

8 Q Did you ever see the movie Shawshank Redemption?

9 A Yeah.

10 Q Morgan Freeman's character, whatever his name is, I
11 can't remember, goes in for a couple parole hearings during
12 that and he gets stamped rejected; do you remember that?

13 A Uh-huh.

14 Q I bring that up because the two life sentence
15 options out of the four that you would have available to you
16 if you got to a second phase involve a possibility of parole
17 after 25 years or 30 years, but you understand that does not
18 necessarily mean --

19 A Right.

20 Q -- that the person will get parole?

21 A Right.

22 Q Okay. So even a jury who votes for one of those
23 sentences may well be sentencing the person to life in prison

1 because the parole board may not let them out; do you see
2 that?

3 A I understand.

4 Q And so there's nothing about that, some people are
5 nervous, quite frankly, about the prospect that somebody
6 would get parole and so I said a little while ago about some
7 people have a view about the death penalty, that it would
8 have a leg up going in a second phase. For want of a better
9 phrase, and this is not a good one, those options would have
10 a leg down. They would sort of start out in a hole because
11 the jurors would stay away from them thinking that, "Hey, I'm
12 not even gonna consider those because this person might get
13 parole somewhere down the road."

14 A Okay.

15 Q Do you feel that way?

16 A No, I don't feel that way.

17 Q Okay. We bring you folks in here and give you all
18 sorts of rules that we went to school for and that we use all
19 the time and I'm sensitive to the fact that, you know, this
20 isn't what you do all the time.

21 A No.

22 Q You and everybody else who has sat there.

23 A Yeah.

1 Q You get some help because the Judge will give you
2 jury instructions. He'll define reasonable doubt for you.
3 He'll define what the crimes are for you. If you get to a
4 penalty phase, he will talk to you again about the definition
5 of reasonable doubt and he'll talk to you about weighing the
6 reasons to impose the death penalty against the reasons not
7 to. But as Mr. Bailey suggested to you, the Judge, the
8 lawyers, nobody can tell you as an individual juror how much
9 weight to attach to a particular circumstance or factor; do
10 you see that?

11 A Uh-huh.

12 Q And so the upshot of that is that even if you get to
13 a second phase in a death penalty case, nobody can ever tell
14 you that you have to vote for a sentence that you don't
15 personally feel is supported by the evidence.

16 A Right.

17 Q You okay with that?

18 A Yes.

19 Q Have you heard the phrase before takin' the fifth?

20 A Yeah.

21 Q "I'm takin' the fifth."

22 It, most people hear it from TV or the movies and it
23 gets a little bit of a bad rap because it's some guy that we

1 know from watching the TV show or the movie that he's clearly
2 guilty and he's sitting there, you know, calmly smoking
3 cigarettes, staring up into the corner saying, "I'm takin'
4 the fifth."

5 That's one negative aspect of it. It actually comes
6 from our fifth amendment and it's based on an idea started by
7 our founding fathers after the revolution that, really, is
8 different from any other country in the world. If the
9 government accuses you of something, you are presumed not to
10 have done it and you need do nothing to help the government;
11 do you appreciate that?

12 A Right.

13 Q What are your thoughts about that? And let me
14 narrow that down a little bit. You think it's better the way
15 we do it, we're sort of in the minority, or do you think it's
16 better the way they do it in other countries?

17 A It's better the way we do it.

18 Q Okay. There are some kind of difficult to
19 understand or deal with consequences of that. I'm sure
20 you've had to mediate a dispute between children from time to
21 time in your life. One accuses the other one of doing
22 something. Before you make a decision, you want to hear both
23 sides of the story; correct?

1 A Yeah.

2 Q And that's the fair way. Whether it's kids or
3 whether it's me accusing Lori here of doing something wrong,
4 you'd want to hear what Lori had to say before you decided;
5 correct?

6 A Right.

7 Q Jurors, of course, want to be fair and so there's a
8 natural inclination to want to hear both sides of the story?

9 A Uh-huh.

10 Q But because of the presumption of innocence, that's
11 where this little box that I talk about that Bailey keeps
12 stealing from me comes in. The State, a lot of people think
13 that if the verdict in a criminal case is guilty, the State
14 won and if the verdict in a criminal case is not guilty, the
15 defendant won. That's really not the case.

16 A Right.

17 Q If it's guilty, they won. If it's not guilty, they
18 lost.

19 A Right.

20 Q Because when they bring the allegations, they're
21 sort of representing that they're going to prove to you
22 beyond a reasonable doubt that the person committed the
23 crime; do you see that?

1 A Yes.

2 Q The reason I like to use the box is for several
3 reasons. One is that, as we've already mentioned, sitting
4 here right now, having heard no evidence against Donna, that
5 box is empty; correct?

6 A Yeah.

7 Q And it is for you, isn't it? You have no problem
8 looking at Donna saying, "I have no problem affording to you
9 the presumption of innocence, I am going to make them prove
10 everything;" right?

11 A Right. Yeah.

12 Q All right. The other reason I like to talk about
13 the box that way is because Donna or anybody who sits at that
14 table doesn't have to pour anything in that box and she
15 doesn't have to reach in and pull anything out; do you see
16 that?

17 A Yes.

18 Q The case is either proved or not proved based upon
19 what they put in the box.

20 A Right.

21 Q As Mr. Bailey said, Ingram and I probably won't sit
22 on our hands the whole time. That's not pulling evidence out
23 of the box. That is simply offering questions, asking

1 witnesses questions that may make the jurors say, you know
2 what, they didn't put as much in the box as I originally
3 thought when I heard the witness testify; do you see how that
4 would work?

5 A Yes.

6 Q And that's one of the reasons, by the way, why we
7 tell jurors not to make up their minds until they hear
8 everything; do you think you can do that?

9 A Yes.

10 Q Now that I've given you this little lecture on the
11 fifth amendment and my silly little box, does it make a
12 little more sense to you now why a defendant does not have to
13 testify in a criminal case?

14 A Oh, yeah.

15 Q And let's do both sides of this issue. If Donna
16 does not testify in this case, are you gonna hold it against
17 her and sort of saying, well, you know what, she must have
18 been hiding something like that guy in the movies who's
19 smoking a cigarette staring up at the corner?

20 A No.

21 Q Okay. If she does testify, she's a witness like any
22 other witness in the case; do you agree?

23 A Uh-huh.

1 Q Now, let's be fair about this, she may have, not
2 may, she does have a stake in the outcome of this case,
3 doesn't she?

4 A Right.

5 Q And that's something, in fairness, you ought to
6 consider; right?

7 A (Nods head.)

8 Q Does it mean you reject her testimony out of hand
9 because she's the defendant?

10 A No.

11 Q Okay. It just means it's something to consider;
12 correct?

13 A Right.

14 Q You may also find the situation where witnesses
15 produced by the State may also have some interest in the
16 outcome of the case. That makes sense to you as well,
17 doesn't it?

18 A Uh-huh.

19 Q And you can test their creditability the same way by
20 taking into account that they may have a reason to shade
21 their testimony; right?

22 A Okay.

23 Q It would be nice for jurors, I think, if when the

1 Judge gave you the definition of reasonable doubt it was
2 something a little more precise than it is, but we are
3 dealing with human affairs here, not science.

4 A Right.

5 Q So it has to be imprecise, and you seem to
6 appreciate that. One of the ways that we like to think about
7 whether or not the State has filled up that box, Mr. Bailey
8 talked to you about some dots and things like that I think
9 when he was talking about reasonable doubt. I like to think
10 of it in terms of a checklist. If you make an important
11 decision, well, actually the one I like to use is if you got
12 done right now with this little discussion that we're having
13 and said, "Hey, you know what? The Mercedes dealership
14 doesn't close till 5. Let me pop down there and buy a new
15 Mercedes," you wouldn't do that, would you?

16 A Probably not.

17 Q Probably not. There are, the pros are obvious in
18 that decision, but there are some cons, aren't there?

19 A (Nods head.)

20 Q For one thing, driving it home and explaining it to
21 your husband might be one. Whatever those cons are, whenever
22 we make an important decision, we sort of weigh those pros
23 and cons, do we not?

1 A Uh-huh.

2 Q Same thing here. When you're deciding whether that
3 box is filled up, you look at all the cons, all the doubts
4 you have about the case. If you can account for some of 'em,
5 somebody shows you a piece of evidence you forgot about or
6 whatever and you go, "You know what, that was silly. I
7 shouldn't have written that down."

8 But if you have one or more than one left that's
9 based on reason and common sense, the State has not proved
10 its case; do you see that?

11 A Yes.

12 Q Any problem holding them to that burden?

13 A No.

14 Q They're a couple of nice guys. They're a couple of
15 good prosecutors. But if the evidence isn't there --

16 A Right.

17 Q -- you don't have any problem coming out and saying,
18 "You're nice guys and good prosecutors, but you didn't fill
19 up the box;" no problem doing that?

20 A No.

21 Q One of the ways they may try to fill up that box is
22 to ask you to make inferences, leaps in logic, about what we
23 call circumstantial evidence; is that a phrase you've heard

1 before or no?

2 A (Nods head.)

3 Q If the inference they ask you to make makes sense,
4 is based on reason and common sense, and if there are no
5 inferences based on reason and common sense that can't also
6 be explained by the same evidence, then that might be a fair
7 thing to do. But what I want to talk to you about for a
8 second is if there are other reasonable inferences. I like
9 to do that by telling a little story. And I'll tell you the
10 truth. I made this story up a long time ago when my son was
11 about this big (indicating). Now he's about 6'5", but the
12 story still is okay.

13 I want you to pretend that he's still little and
14 that it's about the middle of August, it's about 85 degrees,
15 about the same temperature as this courtroom and just about
16 as humid. It's late in the day and the clouds are starting
17 to darken and the breeze is kickin' up a little and we know
18 we're gonna get one of those late afternoon thunder bumpers
19 that we're used to getting in this area. You and I are out
20 in the kitchen and I'm making you some iced tea or lemonade
21 or whatever and we hear a big crash in the living room. When
22 I run in to investigate, my son Mike's cat is darting out
23 between my legs. I get in there into the living room and I

1 look to my left and there's my son, Mike, with his hands over
2 his face like this (indicating). Over to the right is my
3 wife's Norman Rockwell plate knocked off the mantle,
4 shattered on the hearth. Couple feet from that, a Nerf ball.
5 Now, it could be that Mike was throwing the Nerf ball like
6 he's been told 631,000 times not to do and the noise scared
7 the cat.

8 Could be that the cat was walking on the mantle like
9 she's been told 631,000 times not to do and Mike is going,
10 "Oh, boy. Mom's gonna be mad. And on top of it all, since I
11 never pick anything up, my Nerf ball is over there. That
12 doesn't look good for me."

13 It could be that the breeze from that approaching
14 thunderstorm got the best of the plate, the noise scares the
15 cat, Mike sees the Nerf ball and thinks he's gonna get blamed
16 for it.

17 Here's the point of my story. From that
18 circumstantial evidence, although I could accuse Mike of
19 breaking that plate, I certainly couldn't prove it beyond a
20 reasonable doubt, could I?

21 A Right.

22 Q Wouldn't be fair, would it?

23 A No.

1 Q Any problem holding the State to that type of burden
2 when you look at their circumstantial evidence?

3 A Yes -- oh, not a problem, no.

4 Q Any questions you have or anything that you have
5 thought of since we've been up here?

6 A No.

7 Q Okay. As Mr. Bailey said, you would be an
8 alternate. And he's quite right that many times we have put
9 alternates into service. It's what I call the always a
10 bridesmaid and never a bride question, which you appreciate,
11 don't you, that it's important to pay attention if you're an
12 alternate because you never know.

13 A Right.

14 Q Somebody else, one time, used the analogy of a pinch
15 hitter in baseball. You know. You're sitting on the bench
16 day dreaming or whatever and all of the sudden, the coach
17 says, "Get in there," and you got to be game ready.

18 A I've been a pinch hitter.

19 MR. JUHASZ: I appreciate your time.
20 Thank you.

21 JOANNE M. BATES: Okay.

22 MR. JUHASZ: Thank you, Judge.

23 MR. BAILEY: Pass for cause, Your Honor.

1 MR. JUHASZ: Pass.

2 THE COURT: Ma'am, you will be in the pool
3 from which the alternates will be chosen and we're going to
4 do that shortly. If you'll please go back downstairs and
5 then we'll bring you all up together. Okay?

6 JOANNE M. BATES: Okay.

7 THE COURT: Thank you. You're not to
8 discuss anything of course.

9 JOANNE M. BATES: Right.

10 (Whereupon, Joanne M. Bates was excused.)

11 THE COURT: We have enough now to proceed
12 with the selection of the alternates; is that correct? Speak
13 up. Anybody have anything?

14 MR. JUHASZ: I believe we do. Yes, sir.
15 I'm sorry. I thought it was a statement and not a question.

16 THE COURT: Oh, well, it probably sounded
17 like a statement. Do you want a couple of minutes and we'll
18 get the prospective jurors up here and then we'll finish this
19 off.

20 (Whereupon, a discussion was had off the record.)

21 (At 2:20 p.m., the prospective alternate jurors returned to
22 the courtroom.)

23 THE COURT: Folks, we're gonna play a

1 little musical chairs here if you don't mind.

2 Mr. Kotwis, will you please sit in the first seat
3 here; next will be Michael Blake in chair number two; next is
4 David Ratcliffe; Mr. Chetsko, number four; then Mary Ohara,
5 number five; Mr. Kahler; and then over here we have
6 Mrs. Massary and Miss Bates. That's in your numerical order.

7 To the State and the defense, I ask, are there any
8 further challenges for cause? I think they've been passed.
9 You've passed on challenges for cause?

10 MR. BAILEY: Pass for cause, Your Honor.

11 MR. INGRAM: Pass for cause, Your Honor.

12 THE COURT: Very good.

13 Does the State wish to exercise a peremptory?

14 MR. BAILEY: Yes, Your Honor. The State
15 would like to thank and excuse Mr. Ratcliffe.

16 THE COURT: Mr. Ratcliffe, we thank you,
17 sir, for your time and your patience.

18 DAVID P. RATCLIFFE: Okay.

19 THE COURT: Okay? Thank you very much.

20 Peremptory to the defense.

21 MR. INGRAM: The defense would thank and
22 excuse Mr. Blake.

23 THE COURT: Sir, thank you very much for

1 your time and your patience.

2 MICHAEL E. BLAKE: You're welcome.

3 MR. JUHASZ: Thank you, Mr. Blake.

4 THE COURT: Peremptory to the State.

5 MR. BAILEY: The State would like to thank
6 and excuse Mr. Kahler.

7 THE COURT: Mr. Kahler, thank you, sir.

8 TROY D. KAHLER: You're welcome.

9 THE COURT: You have a good day.

10 MR. BECKER: Thank you.

11 MR. JUHASZ: Thank you, Mr. Kahler.

12 THE COURT: Peremptory to the defense.

13 MR. INGRAM: We would thank and excuse
14 Mr. Kotwis, Your Honor.

15 THE COURT: Sir, we thank you so much.

16 ANDREW KOTWIS: Thank you.

17 MR. BECKER: Thank you, Mr. Kotwis.

18 MR. JUHASZ: Thank you, Mr. Kotwis.

19 THE COURT: Okay. The peremptories being
20 exhausted, the remaining four persons will be the alternates
21 in this matter. Now we've got two chairs over here. We're
22 gonna have to get two more chairs. We'll get some in for
23 Tuesday, tomorrow, in case you folks need them. I don't know

1 if you will or not.

2 MR. BECKER: Well, we're gonna need one
3 for Detective Sergeant Monroe.

4 THE COURT: Can I presume upon you to put
5 two up there now?

6 MR. BECKER: Sure.

7 MR. BAILEY: Can we approach for one
8 second?

9 THE COURT: Sure.

10 MR. BAILEY: I've got a question.

11 (Whereupon, a conference was held at the bench.)

12 THE COURT: Okay. If you folks will be
13 seated. Mr. Chetsko, you're in chair number one here. Yeah.
14 Right over there. Miss Ohara, yes, number two. Miss
15 Massary. And Miss Bates, number four.

16 Okay. Just a couple remarks here to the alternates.
17 You might call down. Will you call down for the other
18 twelve?

19 You folks know by now, part of the trial requires me
20 to repeat things that I know you have to get sick of hearing,
21 but you have to, of course, pay attention. That doesn't
22 presume you're not going to pay attention, but at times
23 people who are alternates think, "Well, the way this trial is

1 going, there's not much of a chance of me sitting on the
2 jury."

3 That is not true. We're going to be probably at
4 least three weeks on this. And the problem for that is we
5 only have three and a half days each week because of other
6 things that the Court must do. You get tired at times. I
7 suspect you get bored at times. We'll get into certain
8 presentations of evidence that, to be kind, it's boring. But
9 it's absolutely essential that you try to maintain your
10 observation because many times when you get back in the jury
11 room, if you get back there, it is very important to be able
12 to have recall. Part of the system, now you've got twelve
13 people, but it's nice if you're back there yourself that you
14 have the recall, you don't have to depend on somebody else's
15 memory over this period of time of three weeks. We've
16 already had, in the time period from the beginning of this
17 trial, several people who have had things come up that were
18 originally slated to possibly be on the trial found it was
19 impossible. Things come up. And I don't know that I've ever
20 had a capital case that we didn't have at least one of the
21 alternates that ended up in the jury itself. So with that
22 being said, we're going to get the jury up here and swear all
23 you folks in.

1 (Whereupon, the following proceedings occurred in open court
2 with the jury and four alternates at 2:30 p.m.)

3 THE COURT: For the record, we have a jury
4 of twelve persons seated with four alternates to begin this
5 trial. Would all of you folks, the jury and the alternates,
6 please stand and raise your right hand to be sworn.

7 (Whereupon, a jury of twelve and four alternates was sworn by
8 the bailiff, Laurie Brown.)

9 THE COURT: Okay. Fine. Please be
10 seated.

11 Because of the time, I'm going to give you some
12 preliminary instructions I have to give before we start and
13 then we will begin at 9:00 in the morning. We will go right
14 into the opening statements of counsel. That is an
15 opportunity that, one of the few times that counsel, during
16 the course of the trial, have an opportunity to speak
17 directly to the jury. The opening statements will be from
18 the State an outline of the case as they see it that they are
19 required to prove beyond a reasonable doubt. The defense may
20 or may not address the remarks of the State. If the defense
21 does, then it is important that you listen primarily to the
22 State because the State has the burden of proving all the
23 allegations contained in the indictment and specifications.

1 Many times during the course of a trial, I get the impression
2 that the opening statements are kind of treated as
3 preliminary and it isn't that important. I think it's very
4 important because it gives you landmarks, so to speak, to try
5 to find as the evidence that's produced. The opening
6 statements are very important.

7 Now the attorneys for these parties will, of course,
8 have active roles during the trial. They will be called upon
9 to make opening statements. Once we begin presentation of
10 evidence, they will question witnesses and make objections.
11 And after the evidence is presented, they will be called upon
12 to give a final argument as to their view of what the
13 evidence does show. What it ultimately shows, of course, is
14 what you determine from the evidence the facts to be.

15 Now you must remember, and this is most important,
16 that the attorneys are not witnesses. And since it is your
17 duty to decide this case solely on the evidence which you see
18 or hear in this courtroom on this case, you must not consider
19 as evidence any statement of any attorney made during the
20 trial.

21 Now, there is one exception to that. And if the
22 exception occurs, the Court will draw that to your attention
23 specifically. If the attorneys agree to any particular fact,

1 we call this a stipulation of fact or an agreement of fact,
2 then it will be your duty to accept that fact as having been
3 conclusively proven and you will not require any further
4 proof on that point. That's if both sides agree to any fact.
5 Otherwise, every other fact is in dispute between the parties
6 and requires the burden of proof.

7 Now, if during the questioning of a witness a
8 question is asked and an objection is made to that question,
9 a question by itself without an answer to provide meaning has
10 no meaning. And many times, a question almost seems to beg
11 an answer. You cannot give in to that temptation. If a
12 question is not answered, you must disregard the question.
13 It's not part of this case.

14 Sometimes as the questions are put to a witness,
15 there will be a question put, an answer given and then a
16 motion to strike. Now if the Court, in passing a ruling on
17 that motion to strike, grants the motion to strike, that
18 means that it is not proper evidence and should not have come
19 in. Sometimes the answer comes out so quickly that the other
20 side doesn't have time to object or whatever. Now that's a
21 little bit more difficult than if you've heard a question
22 that you think, well, I might know the answer to that, but I
23 can't, you have to say to yourself, I have to put it out of

1 mind. But here you have a question and an answer that's
2 already been given. So this creates a little bit more will
3 on your part. I can tell you that you have to forget it.
4 Well, that's meaningless. But we are rational beings. And
5 if the Court instructs you that the question and the answer
6 is not evidence, then you have to be able to take and set
7 that aside out of your mind knowing that you cannot use it in
8 any final determination. It's quite possible to do this. It
9 sounds, at first blush, like an impossibility. It is not.
10 You have to keep in mind the proper evidence is what you have
11 to determine this matter on.

12 Now, as jurors, you also have the sole and exclusive
13 duty to decide the credibility of witnesses who will testify.
14 And you're going to have numerous witnesses in this case.
15 That simply means that it's up to each of you individually as
16 to decide what testimony you find worthy of belief or what
17 testimony you do not. In determining these questions, you
18 will apply the tests of truthfulness which you apply every
19 day in your lives. These tests include the appearance of
20 each witness on the stand; that person's manner of
21 testifying; and of course the reasonableness of the
22 testimony; the opportunity the witness had to see, hear or
23 know about that to which they're testifying; their accuracy

1 of memory; their frankness or lack of it; their intelligence;
2 their interest and bias, if any, but together with all the
3 facts and circumstances surrounding the testimony. In
4 applying these tests, you will assign to the testimony of
5 each witness such weight as you deem proper.

6 Now you're not required to believe the testimony of
7 any witness simply because it was given under oath. No one
8 is able to testify in a court in Ohio without being placed
9 under either oath or affirmation. But that is merely one of
10 the tests that you apply in judging the testimony of any
11 particular person, that it is being given under oath or
12 affirmation.

13 Now in applying these tests, you will assign to the
14 testimony of each witness such weight as you deem proper and
15 you are not required to believe -- I already said that. You
16 may believe or disbelieve all or any part of the testimony of
17 each witness. You should not decide any issue of fact merely
18 on the basis of the number of witnesses who testify to one
19 side or the other.

20 The final test in judging evidence should be the
21 force and the weight of the evidence itself, regardless of
22 the number of people testifying to that fact. The testimony
23 of one witness believed by you is sufficient to prove any

1 given fact. Also, discrepancies in a witness's testimony or
2 between that person's testimony and that of others, if that
3 should occur, does not mean that you should disbelieve the
4 witness, as people commonly forget facts or recollect them
5 erroneously after the passage of time. You're certainly all
6 aware of the fact that two or more people who witness an
7 event at a later time often recall the event differently.
8 Sometimes there's a marked difference. You wonder if they
9 witnessed the same event. But that's the challenge to you
10 folks is to listen to each witness, to compare that witness's
11 testimony with the testimony of others and to come up with a
12 rational understanding of what you believe the facts to have
13 been.

14 When someone testifies that, you know, it was a
15 black cat and somebody else said, no, it was a calico cat,
16 that's not an important disparity. It's the question about
17 how was the cat involved in the case.

18 Now if you conclude that a witness has wilfully lied
19 to you during their testimony, you would have the right to
20 reject all of that person's testimony unless, by taking all
21 the testimony of all the witnesses and all the evidence, you
22 find that there is some particular point or part of that
23 person who lied to you's testimony that is valid. You have

1 to sift through it all.

2 There, of course, this being criminal, they have
3 these in the instructions, there's no interrogatories or
4 depositions or anything? Very good. Okay.

5 This concludes my preliminary instructions to you.
6 I hope it will be of some assistance as we begin the trial
7 tomorrow morning. I may be called upon to give you
8 instructions of law as we proceed through the case. I am
9 called upon to give you a rather detailed instruction of law
10 at the conclusion of the case. And as I mentioned to the
11 jury, I don't believe, well, maybe you were all here, we will
12 make every effort to give you a written copy of those
13 instructions. There are times that we change things at the
14 last minute and that isn't possible, but there will be enough
15 work go into this beforehand that you'll probably have a copy
16 with you.

17 Okay. I will release you for the evening. Be back
18 here at 9. You should remember, and I will constantly remind
19 you, you're not to discuss anything about the case with
20 anyone, you're not to read anything in the newspaper, you're
21 not to watch anything on TV. If you get a visitor from outer
22 space during the nighttime, you are to disregard that. You
23 are to keep your own counsel until the time arrives when you

1 get back in the jury room at the proper time. That's when
2 you start talking about the case and you will reach a
3 resolution. In the meantime, you will hear bits and parts of
4 the case as we proceed. As I said at the opening, until you
5 have all that is necessary to make an informed decision,
6 there's no point in trying to do so.

7 I'm the only judge in the court that has this rule,
8 but all of you ladies are to instruct your significant other
9 that when you get home each evening they have supper ready
10 for you. Okay? Very good.

11 We thank you folks for your patience. You have been
12 extremely patient, considering the extreme length this has
13 taken to pick a jury, and we'll try to keep the thing moving
14 as swiftly as we can from this point up.

15 Have a nice evening. Thank you.

16 (Whereupon, the jury was excused at 2:43 p.m. and the
17 following proceedings occurred in open court at 2:46 p.m.)

18 MR. INGRAM: The defense notes an
19 objection to the judge's preliminary instructions to the
20 jury. The Court noted that the defendant may or may not
21 address the remarks of the State and the Court then stated,
22 and I believe this is a quote, "If the defense does, it is
23 important that you listen primarily to the State because the

1 State has the burden of proving the allegations." We object
2 to that instruction and we would move for a mistrial.

3 THE COURT: Okay. That motion will be --
4 do you wish to address?

5 MR. BAILEY: Well, I think you just have
6 to move that adverb or that adjective or whatever primarily
7 is and correct that and explain what you meant tomorrow
8 morning.

9 THE COURT: That was, I agree, it might
10 politely be called a judicial faux pas. I will correct that
11 before we start with the jury in the morning.

12 (At 2:48 p.m., court was adjourned to Tuesday, May 13, 2003.)

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1 TUESDAY, MAY 13, 2003 at 9:20 A.M.

2 THE COURT: The Court has before it
3 defendant's motion in limine raising the issues of the
4 government introducing statements of the alleged
5 co-conspirator, Nathaniel Jackson, whether being oral or
6 recorded or in writing. The State is objecting at this
7 point.

8 MR. BECKER: Well, I'm objecting for a
9 number of reasons. First of all, these two motions were not
10 filed until yesterday at I believe 2:27 p.m. I think that's
11 extremely late in the course of this matter. Discovery has
12 been provided and available for months. And in fact the
13 State has filed and permitted open discovery in this case and
14 defense has, has and continues to be available to have,
15 anything the State has in this matter.

16 The basis of one of the motions is that the State
17 not be permitted to introduce any statements of
18 co-conspirator Nathaniel Jackson who's been convicted and is
19 currently on death row for his part in these crimes unless
20 and until the conspiracy can be established. The State is
21 going to present the testimony, or I'm sorry, the taped
22 statements of this defendant, her own words, which are by
23 definition not hearsay because they're going to be introduced

1 and used against her. Intertwined with those are the
2 statements of Nate Jackson. And I think the first time she
3 makes a statement on those tapes regarding the death of
4 Robert Fingerhut or taking care of the package or whatever
5 else they refer to it, the State has met its burden. It's
6 not required to show that, I mean there's really no
7 quantitative measurement of what the conspiracy consists of.
8 So once her statement is introduced that there is a
9 conspiracy, I think the State is free to introduce Mr.
10 Jackson's statements in both recorded form and in written
11 form.

12 Second of all, and I would point out to the Court
13 that if this is going to be, if we really want to have more
14 testimony than that as to the conspiracy, because the State
15 has already subpoenaed witnesses, we'll have to give our
16 opening statements this morning, hold off and I'm gonna have
17 to readjust witnesses because we've got, Mr. Bailey and I
18 have witnesses coming. We've got one witness here from
19 Lorain Correctional Institution already, but we will need at
20 least maybe a day off to readjust witnesses. I've made phone
21 calls, I've contacted witnesses. We've got people coming in
22 missing jobs and work. And obviously they're gonna be upset,
23 but I'll have to put on and start with a different witness to

1 show the conspiracy to begin with. And if the Court wants to
2 do that --

3 THE COURT: Well, the alternative is to
4 just allow you to proceed as you wish to do and then perhaps
5 have this case come back on, from appeal.

6 MR. BECKER: But I don't think --

7 THE COURT: You know, I don't wish to keep
8 this jury waiting any longer than we have to and I would just
9 as soon make this as short and sweet as possible, but there's
10 been a motion raised. They have raised a legitimate point
11 that before a conspiracy, there's no other way that, it's
12 hearsay without the fact of the --

13 MR. BECKER: Now, wait a minute. Not her
14 statement.

15 THE COURT: I understand, but you're
16 proposing to introduce her statements along with Nathaniel
17 Jackson's.

18 Now you're saying that it's a self-qualifying point,
19 I guess, that by her statements, that alone is enough to
20 establish that there's a conspiracy.

21 MR. BECKER: And I believe her statement
22 is the independent proof of the conspiracy that's required
23 under 801(D)(2)(e). Once she makes a statement that she's

1 part of the conspiracy, anything Nate Jackson says in
2 furtherance of that conspiracy is clearly admissible. And I
3 think that's, there's no quantitative amount in the rule.

4 THE COURT: Oh, I agree with that.

5 MR. BECKER: Okay.

6 THE COURT: Well, there's this argument
7 about whether prima facie or preponderance and all that
8 stuff.

9 MR. BECKER: Well, I think once you hear
10 the conversation, I think the rule, and if the Court would
11 read the rule through the, the committee notes to the rule,
12 the rule is to prohibit the State from bringing in people
13 that have made deals with the State and exchange testimony
14 for favorable plea bargains, put them on the witness stand
15 and introduce their acts and say, "Well, we engaged in a
16 conspiracy with this defendant."

17 That's not the case at all in this case. What the
18 State is gonna present is a conversation that involves the
19 co-conspirator with this conspirator, with this defendant,
20 her own words, which are not hearsay. I don't think we're
21 violating the rule in any sense.

22 THE COURT: Here's the point that I made,
23 Mr. Becker.

1 MR. BECKER: Okay.

2 THE COURT: Are you not simplifying the
3 fact that two people who say we're going to enter into a
4 conspiracy does not a conspiracy make as far as the point
5 we're talking about? There has to be some showing of some
6 attempt or carrying on a conspiracy over and above just
7 talking about it.

8 MR. BECKER: I disagree because I don't
9 think that's what the rule -- the rule requires proof upon,
10 independent proof of the conspiracy. It does not require, it
11 only requires a prima facie showing of the existence of the
12 conspiracy. And I think once the prima facie evidence is,
13 when she says, "Let's do it," and he says, "Yeah, put me in
14 the house," or, "All I got to do is be in the house," that's
15 the independent proof and that's all that's required is prima
16 facie.

17 THE COURT: Let me ask you this. If you
18 and I go out some night and were to get blistered and I say
19 to you, "Hey, let's rob a bank."

20 MR. BECKER: Uh-huh.

21 THE COURT: And you say, "Okay," can we be
22 charged with a conspiracy?

23 MR. BECKER: Well, I got to know what the

1 acts are. I got to know what the further acts were.

2 THE COURT: My point. My point. Isn't
3 there something more than just --

4 MR. BECKER: That's fine. That's fine.
5 You know what? To accommodate all the parties, we'll give
6 our opening statements. I would respectfully request and I
7 think I'm entitled to, I'd ask for a two-day continuance in
8 this matter, actually put us and we won't start the testimony
9 until next Wednesday because I've got to readjust these
10 witnesses, I've got about 15 phone calls I've got to make.

11 MR. BAILEY: Tuesday.

12 MR. BECKER: Tuesday. That's right. I'm
13 sorry. Next Tuesday. Let's continue the case until next
14 Tuesday after we give our opening statements. I'll have to
15 readjust these witnesses and I'll have to, you know, get
16 these witnesses all readjusted. That's fine. I have no
17 problem doing it. I mean we'll try the thing until Labor Day
18 if that's what they want.

19 THE COURT: Well, I have no problem with
20 going forward today, but --

21 MR. BECKER: Wait a minute.

22 THE COURT: I don't want to deal with this
23 case twice.

1 MR. BECKER: That's fine. I have no
2 problem if the thing lasts until September. I really don't
3 care if we go till Christmas. I mean if we want to not risk
4 that, then that's fine. Let's give our openings and come
5 back on Wednesday or Tuesday. That's fine with me.

6 THE COURT: Gentlemen.

7 MR. JUHASZ: Your Honor, I don't intend to
8 belabor the motion or regurgitate the motion. I simply want
9 to make several points based upon what Mr. Becker has said.

10 First of all, I would have to agree that the State
11 has been more than generous in providing us open-file
12 discovery. I'm not certain how that's material to what is at
13 issue here because I think that we're getting the situation
14 turned around. The defense is being berated for filing a
15 motion in limine a day before the testimony begins as if it's
16 a big surprise there, everybody, that this is the
17 well-established law in Ohio. The fact of the matter is if
18 the State had chosen to proceed as it apparently wants to, we
19 could have simply stood up at that time and made a timely
20 objection as I believe we did in the Santine case. We're
21 simply doing this to bring it to somebody's attention that we
22 do intend to require the government to follow the law. It
23 isn't that we made up the law for this motion in limine

1 yesterday afternoon. This is the law that exists in Ohio
2 that everybody should be expected to abide by. So I think
3 it's unfair to turn it around as if the defense is attempting
4 to be obstructionists. These rules exist so that the
5 government knows how it has to proceed to prove its case when
6 it wants to use statements that it claims are made during the
7 course of a conspiracy.

8 Secondly, I would have to say that I am inclined to
9 agree with the Court and disagree respectfully with the
10 prosecutor about the concept of independent proof and the
11 existence of a conspiracy because the rule doesn't state an
12 overt act when talking about when the statements of
13 coconspirators are admissible doesn't somehow change the
14 common law of Ohio. And I set forth in the memorandum, as
15 the Court has pointed out, the existence of a conspiracy
16 requires not only an agreement, but an overt act, and that
17 must be shown as well.

18 Thirdly, I think it's important to point out because
19 there is a difference, in my estimation, between Ohio law and
20 federal law. The Ohio rule specifically requires independent
21 proof of the conspiracy. I cited to the Court the Bourjaily
22 case from the United States Supreme Court that came out of
23 the Sixth Circuit. The federal rule seems to be, although

1 Justice Stevens had some problems with his concurrence in it,
2 the federal rule seems to be that you may, in essence,
3 bootstrap the existence of a conspiracy by using statements.
4 That is not the rule in Ohio it's our position.

5 And finally, as regards to going forward today,
6 although the State may not be able to put on a slide show and
7 an audio show, I don't think there's anything that prohibits
8 the State from calling these witnesses in and laying the
9 foundation so that when they later, if they do as they claim
10 they'll be able to do, establish the existence of a
11 conspiracy, then those items have the foundation having been
12 previously laid would be properly admissible into evidence.

13 THE COURT: Well, Mr. Bailey and yourself
14 and I went through this whole thing on the Santine, and that
15 was my understanding at the time, that the mere talking about
16 something does not make a conspiracy without additional
17 substantiation that there's been some attempt to put that
18 conspiracy into the workings. And that's the point I've
19 attempted to make with Mr. Becker.

20 Mr. Becker, your view is that the mere statement
21 alone is enough to establish that there is a conspiracy; is
22 that correct?

23 MR. BECKER: Your Honor, I think the Court

1 is misinterpreting the rule and I think defense counsel, with
2 all due respect, is completely --

3 THE COURT: No. I know what the rule
4 says, but I also know what the case law says and that you
5 have to look at the case law, as well as the rule. And
6 they're saying that --

7 MR. BECKER: The rule says -- and let's
8 let me quote the rule. The rule specifically states, 801(D)
9 states, "Statements which are not hearsay."

10 801(D)(2), subsection e, says that a statement by a
11 co-conspirator of a party is admissible as substantive
12 evidence if the co-conspirator's statement is offered against
13 that party and the statement was made during the course of
14 and in furtherance of the conspiracy upon independent proof
15 of the conspiracy.

16 We're not introducing statements of the
17 co-conspirator. We're introducing her statements, the
18 conspirator's statements. This is not where, according to
19 what Mr. Bailey is telling me, I have no idea who Santine is
20 or what happened, but it's my understanding in the Santine
21 case that the State attempted to introduce statements of the
22 coconspirators with nothing more. Well, that's not the case
23 in this instance. We're introducing her statements which

1 happen to contain, and they're completely meaningless unless
2 they're in the context of the conversation, which happen to
3 be the co-conspirator.

4 THE COURT: And that's the very thing that
5 the motion is raised about is the statements of the
6 co-conspirator.

7 You're saying, in effect, as I get it, that under
8 the rule that she's going to make these statements in the
9 context of a conversation?

10 MR. BECKER: Exactly.

11 THE COURT: Therefore, you establish that
12 there is a conspiracy?

13 MR. BECKER: Yes.

14 THE COURT: And that's what I'm saying is
15 there has to be something more than just the talk.

16 MR. BECKER: And what case cites that? I
17 want to know what case, what case says that her statement,
18 the conspirator's statement, is not admissible?

19 THE COURT: Mr. Juhasz or Mr. Ingram?

20 MR. JUHASZ: I'm sorry. Do you want a
21 case citing or do you want to know if we have anything else
22 to say?

23 THE COURT: Yeah. His point is do you

1 have specific cases that say this? You know. It's my
2 understanding from being through this one time before that
3 there has to be some showing of --

4 MR. BECKER: Your Honor, I'm gonna direct
5 the Court, with all due respect, to State of Ohio versus
6 Carter. It's an Ohio Supreme Court case, 72 Ohio State 3d
7 545, 651 Northeast 2d 965. It's a 1995 case. That Supreme
8 Court case found that at the time, Horton -- Horton was a
9 co-conspirator, or I'm sorry, Horton was someone who
10 overheard a conversation between the co-conspirator and the
11 defendant. The State elicited testimony from Horton.

12 "The requisite foundational prima facie showing of
13 the existence of a conspiracy between Carter and Hill,"
14 Carter being the defendant, Hill being the co-conspirator,
15 "by independent proof had not been made as required by" --
16 even though there was independent proof of this, it was
17 subsequently provided by the State through the introduction
18 into evidence of the defendant's tape-recorded statement.

19 That, and then I would also cite State versus Milo.
20 It's 6 Ohio App. 3d 19 at 22 and 23. It's a 1992 case. This
21 is from the Ohio Supreme Court which basically is saying that
22 independent proof of the conspiracy was provided by the State
23 through the introduction of the defendant's taped statement.

1 That's what that case says. It's from the Ohio Supreme
2 Court. And I have a copy of it and I'll provide it to the
3 Court and defense counsel.

4 THE COURT: Well, again, I have no problem
5 with you introducing any, anything that the defendant says at
6 this point --

7 MR. BECKER: Okay.

8 THE COURT: -- that she is engaged in a
9 conspiracy. That's fine. The objection is not to her
10 statement. It's to the codefendant's or the co-conspirator
11 or alleged coconspirator's statement.

12 MR. BECKER: Well, then we're gonna move
13 for a continuance until next Tuesday so I can, because -- and
14 with all due respect to defense counsel, my understanding of
15 the law was that I could introduce her statements and I was
16 prohibited from introducing the coconspirator's statements
17 until the -- and let me rephrase that.

18 My understanding of the law is and I believe the
19 correct interpretation of the law is the State is permitted
20 to introduce the coconspirator's statements if they introduce
21 the defendant's statements because the defendant's statements
22 are independent proof as required under the evidence rule of
23 the conspiracy. That's my understanding of the rule, I think

1 that's what these Ohio Supreme Court cases say, and we were
2 prepared to present this case with her statements first. And
3 we're gonna ask for a motion to continue this case.

4 THE COURT: I don't know that we have a
5 disagreement on where you're going. I think it's just on how
6 you get there. I am familiar with the facts of this case
7 from the prior and I might state that there are other things
8 that were done, according to the State's theory of this case,
9 to put this conspiracy into execution. It would seem to me
10 at a minimum that if something of that nature is presented,
11 then that raises, with any statements made by the defendant,
12 the issue as to whether or not there is a conspiracy. But
13 I'm saying that mere talk alone under Ohio law as I
14 understand it, and I'm, I may be wrong on this, but I don't
15 think that I am, mere talk alone of a conspiracy is not
16 sufficient. There has to be something over and above that to
17 show that there was an attempt at least to put it into
18 effect. I know what the rule says.

19 MR. BECKER: I'm telling you what the Ohio
20 Supreme Court says in State of Ohio versus Carter. It's a
21 1995 case. And that case says that independent proof of the
22 conspiracy was provided by the State through the introduction
23 into evidence of the defendant's taped statement.

1 And I think -- I respectfully disagree with the
2 Court, but I'll abide by the Court's ruling.

3 THE COURT: Listen to me.

4 MR. BECKER: I'm listening.

5 THE COURT: That wasn't, that case did not
6 contain a dialogue between the conspirators. It was a
7 statement made by the defendant. I have no objection to you
8 introducing that at this point.

9 MR. BECKER: Well, the problem is her
10 statement in this case is self-serving.

11 THE COURT: I understand that. I
12 understand that. It doesn't make any sense out of the
13 context of the other person talking.

14 MR. BECKER: Well, we're gonna need some
15 time. I'm respectfully requesting the Court because my
16 interpretation apparently is wrong of this rule, I'm gonna
17 ask the Court to, well, I suppose we can present Mr. Monyak;
18 right? We can probably present Monyak; correct?
19 (Whereupon, a discussion was held off the record.)

20 THE COURT: Will counsel approach?

21 MR. BECKER: Well, you know what? I think
22 we'll be all right then. We're gonna need some time, Your
23 Honor. That's all I'm telling the Court. We will be able to

1 present one witness today.

2 THE COURT: Will counsel approach for a
3 moment, please?

4 (Whereupon, a conference was held at the bench.)

5 THE COURT: Counsel has asked for a few
6 minutes. They've had it. Mr. Becker, do you have anything?

7 MR. BECKER: Yes, Your Honor. The State
8 is going to move at this time for the admission of State's
9 Exhibit 271-D-139. It's a letter dated Monday,
10 November 26th at 1 p.m. It is ostensibly signed by Donna
11 Roberts. It is a letter that is one, two, six pages in
12 length. It has already been stipulated to, in fact, that it
13 was Miss Roberts' letter. There is a stipulation that all
14 the letters were written by Miss Roberts as well as all the,
15 well, all the exhibits from 271-D-1 through 139 inclusive
16 were written by Miss Roberts, and I don't have the exact
17 numbers for Mr. Jackson, but the numbers and the exhibits
18 that bear his writing were his as well. And just very
19 briefly, I'll read into the record the relevant portion of
20 the letter.

21 "Now for the other thing. I only worry about losing
22 you or losing me to incarceration. You know I will be the
23 first one to face questioning. I don't want to have to get

1 an attorney and defend myself. Oh, and I have had some info
2 to add to our plan. You know there are phone records and CCA
3 pass records. Well, everyone thinks he is gay. Did you know
4 that? It's been whispered a lot in Youngstown and the good
5 part is that he is the one --" I'm sorry. Am I going to
6 fast?

7 "The good part is that he is the one who wrote and
8 paid the checks on the phone bills. His writing. So he knew
9 about you (not really), but the whole phone thing could be
10 good because it shows you were a friend to both of us and
11 maybe you were a real good friend of his. Anyway, your hair
12 and prints could be anywhere since you drove the car and were
13 here and all. But I think it's all gonna come down to me
14 when I get that call and I can handle that because it means
15 everything to us both. I am not even worried about it any
16 longer because I've thought about it a lot and am prepared.
17 Instead of laughing and cheering, I will concentrate on
18 losing someone that I would really go nuts over and react
19 accordingly. Just tell me how you're gonna be here for weeks
20 without anyone knowing. That will be the real trick, huh?
21 And after it's over, I can get a place for you or even here
22 in Warren for a couple weeks because who is to tell me not
23 to. Oh, I have been all over looking for a ski mask. I only

1 see those knitted caps. Any suggestion on who might have
2 them? And I'm still looking for gloves because I don't think
3 the thick ones I'm seeing are good to work with as would be
4 thinner leather ones. Know what I mean?"

5 And then -- I mean there's a lot more.

6 THE COURT: Okay. I think that's
7 sufficient.

8 MR. BECKER: Okay.

9 THE COURT: That will become --

10 MR. BECKER: And the State will present
11 testimony later on detailing where these letters were found,
12 how they came into the possession of the police.

13 THE COURT: Mr. Juhasz or Mr. Ingram, do
14 you have any --

15 MR. JUHASZ: Your Honor, I have to agree
16 that we stipulated to the fact that the letters written by
17 Miss Roberts were, in fact, written by her. And as an
18 officer of the Court, I have to agree that I have seen case
19 law saying that the mailing of a letter does constitute an
20 overt act. So therefore, if the Court is going to allow the
21 State to proceed, I really don't have much to say about it.

22 THE COURT: Okay. Fine. Thank you.

23 MR. JUHASZ: Thank you.

1 THE COURT: Okay. Let's get this jury up
2 here.

3 (At 9:54 a.m., the following proceedings occurred in open
4 court with the court and jury present.)

5 THE COURT: Good morning to all of you.
6 I asked you to be here at 9 and you were. I hope this isn't
7 a precursor of things to come. We're getting started at 10.
8 The point is that we had a couple motions that were filed
9 this morning, properly so, and we had to deal with the
10 motions on the record, and that's what took the hour up. I
11 explained to you that there will be times like this during
12 the course of the trial when things come up. There are many
13 motions that can't be handled beforehand. They arise once
14 something else has already happened or during the course of
15 the trial. There are many things that it is not proper to
16 hold in front of the jury. You remember the rules we keep
17 mentioning. There are a lot of things that happen during the
18 trial that is not something for the jury to participate in.
19 You participate in finding, from the evidence presented, the
20 facts of the case. But any issues of law, you have no part
21 in the, in the decision on that. That's the Court's function
22 after argument by counsel. So whenever we have a sidebar,
23 which means that we'll be whispering and you're not hearing

1 what we're talking about, we're doing that because we're
2 following the rules or attempting to do so.

3 Okay. I have to correct one thing I said to you
4 yesterday that was, if not incorrect, perhaps misleading and
5 it was properly raised. I mentioned to you about the opening
6 statements which you're about to hear. I made some mention
7 that if the defendant participates in that opening statement
8 that you should primarily I think is the word I used listen
9 to what the State is saying and analyze that. That is
10 misleading at best. As you know or as you will repeatedly
11 hear throughout this trial, this isn't the defendant's case
12 to win or lose. It's the State's case to win or lose. They
13 will win on their evidence or they will lose on their
14 evidence. The defendant need say nothing throughout the
15 trial. If the defense chooses to do nothing throughout the
16 trial, that's not to be taken as meaning anything. You have
17 to analyze the evidence that is presented by the State and
18 whether they prove their case beyond a reasonable doubt.
19 What I was attempting to say was that if the defendant does
20 participate in the opening statement, that will be along the
21 lines of suggesting alternatives in the State's case perhaps.
22 But whatever the defendant says or doesn't say, you have to
23 analyze the evidence on whether the State proves their case

1 or not, not what the defendant does or doesn't do. Okay?

2 Very good.

3 Mr. Bailey, are you ready to proceed with your -- or
4 I'm sorry. Mr. Becker.

5 MR. BECKER: Yes, Your Honor.

6 THE COURT: I always give deference to age
7 is what it is; right?

8 MR. BAILEY: Judge, may we approach for a
9 second?

10 THE COURT: Yeah. Sure.

11 (Whereupon, a conference was held at the bench.)

12 THE COURT: I mentioned yesterday, both
13 sides wanted me to emphasize this, that the opening
14 statements are not evidence. Remember, I told you, nothing
15 the attorneys say throughout the trial is evidence. The
16 evidence will proceed and start right after the opening
17 statements. And the simplest way to cover the opening
18 statements is you should give equal attention to both sides,
19 whatever they say. Okay?

20 Mr. Becker.

21 MR. BECKER: Thank you, Your Honor.

22

23

* * *

1 OPENING STATEMENT ON BEHALF OF THE STATE OF OHIO

2 MR. BECKER: May it please the Court,
3 Mr. Juhasz, Mr. Ingram, Miss Roberts, the defendant in this
4 case, and most importantly, you, Ladies and Gentlemen of this
5 jury. First of all, I want to thank you, each and every one
6 of you, for this important civic duty that you are about to
7 undertake. I think, as we mentioned in the voir dire, I
8 believe probably short of serving your country in the
9 military this is the most important civic duty that you can
10 perform for this country and for your community.

11 In every criminal trial, as an attorney, you look
12 for a theme or you look for maybe a catch phrase to present
13 to the jury. Maybe you try and interwove it or interweave it
14 with some themes from a television show or a news headline or
15 historical context. And I sat long and hard trying to think
16 about what I should present to you as a theme for this case.
17 And after awhile, it became apparent. I don't have to
18 present a theme for you for this case because this defendant
19 spoke the theme, wrote the theme and did the theme.

20 This case is going to be about a relationship.
21 Actually, two relationships. The first relationship is
22 between Donna Roberts and Robert Fingerhut, and that
23 relationship started over 20 years ago when they got married.

1 They lived in the Miami, Florida region. They lived there
2 for a number of years. Eventually, they returned to
3 northeast Ohio. Miss Roberts is from Austintown. They moved
4 to Howland to 254 Fonderlac Drive. They operated the two
5 Greyhound bus stations in this area, the one in Youngstown
6 and one in Warren. At one point during their relationship
7 they opened a restaurant at the Youngstown bus station. And
8 at one point during the operation of those Greyhound bus
9 stations, this defendant met an individual by the name of
10 Nathaniel Jackson. Now you're gonna hear a lot of things
11 about Nathaniel Jackson. You're gonna hear his voice.
12 You're probably gonna read letters he wrote. You will hear
13 testimony about him.

14 Early on in this case, and I think when you were
15 voir dired, defense counsel repeatedly asked you not to find
16 her guilty because of some things that she said that were
17 sexually explicit. And to be quite honest with you, the
18 State is not going to ask you to find her guilty of anything
19 she or Mr. Jackson discussed that may be sexually explicit.
20 She's not charged with that. And what she does in her sexual
21 affairs, that's her own business. And we have no objection
22 to that. But that evidence is gonna be offered to you to
23 show the depth of her emotion and her love for Nathaniel

1 Jackson, a young, 29, 28-year-old black male from the
2 Youngstown area who she fell in love with. And it was in the
3 course of that love that, really, she wrote the theme for
4 this case. And it involves the three most basic human
5 emotions. Love, hatred and greed. And from her own words,
6 from her own writings, and from her own actions, you will see
7 how she acted upon those three emotions.

8 And what you'll find in this case essentially is
9 that she and Mr. Jackson thought about it, they talked about
10 it, they wrote about it, and they did it. And the evidence
11 in this case is basically going to show that sometime in
12 September of 2001 Nathaniel Jackson was sent back to the Ohio
13 state penitentiary system. This was very depressing to
14 Mrs. Roberts. And you'll read about it in her letters.
15 You'll read about how she missed him, how she cared about him
16 and, yeah, there's some things in there about the sexually
17 explicit stuff. It really has no importance in terms of the
18 actual deeds that they did, but it does have importance to
19 show you the depth and the connection that those two had with
20 each other and, really, the love that they had for each
21 other.

22 You'll discover that they were intimate, that in
23 fact they were lovers. They hid their relationship from

1 Mr. Fingerhut. They snuck around.

2 And the testimony will clearly show that while
3 Mr. Jackson was incarcerated in the Lorain Correctional
4 Center, which is on the west side of Cleveland, they
5 formulated a plan to eliminate Robert Fingerhut, to kill him.
6 The motive for this killing was pure greed, \$550,000 in life
7 insurance policies. You will be introduced and the evidence
8 will show that there were two insurance policies. They will
9 show and she will discuss in her conversations and letters
10 the thing with all of the zeros and how she talked to her
11 accountant about the things with all the zeros to make sure
12 that it was paid up until the end of the year.

13 You'll hear testimony and you'll see exhibits from
14 Mr. Jackson talking about what he'll do with those proceeds,
15 how he would like a new Cadillac Deville, and you'll hear and
16 read her words which promise to get him a Cadillac Deville.
17 In fact, she'll tell you in her letters about how they should
18 get a personalized license plate for Mr. Nate Jackson on his
19 new Cadillac Deville.

20 Now, the first part of this case will be devoted to
21 hearing it. You will hear 19 phone calls from the Ohio state
22 penitentiary system. We will introduce witnesses who will
23 tell you that when an inmate is incarcerated at the Lorain

1 Correctional Institution, they are given a pin number. It's
2 sort of like a bank code number. And when you make a call
3 from the institution, which you're permitted to do or
4 Mr. Jackson was permitted to do every Thursday and Saturday,
5 you have to enter that pin number. That is recorded. And
6 you will hear on the conversations that they are being
7 recorded. You'll hear a prerecorded voice at the first part
8 of those conversations and in the middle of those
9 conversations advising that this call is made from the Lorain
10 Correctional Institute and may be recorded or monitored.
11 Mr. Jackson and Miss Roberts, at their peril, disregarded
12 those warnings.

13 And the evidence will show and those phone calls
14 will show that initially Mr. Jackson was to be incarcerated
15 until April of 2002. And again, you'll hear words and
16 letters from this defendant that that saddened her because
17 she was in love with Mr. Jackson and she needed Mr. Jackson
18 there. However, on October 25th, 2001, the evidence will
19 show Nate Jackson found out that he was getting out of prison
20 on December 9th, 2001. He was given credit for time served
21 that he spent at a place called CCA, which is in Youngstown,
22 which is a place he was incarcerated at before he went to
23 Lorain Correctional Center.

1 And on October 25th, 2001, in addition to writing
2 letters to this defendant advising her that he was getting
3 out, he called this defendant. And he called her collect
4 because that's the only way you can call someone from the
5 Ohio state penitentiary is collect. She accepted the calls.
6 And you will hear Nate Jackson describe how -- well, he will
7 ask her what does she want for Christmas. And her reply is,
8 "You." She wants Nate Jackson for Christmas.

9 And Nate Jackson will tell her in that phone call
10 he's getting out December 9th, that she's gonna have him for
11 Christmas. And she will squeal like a little teenager with
12 delight that Nate Jackson is getting out.

13 And in that same conversation, you will hear
14 Mr. Jackson say he's going to do it the next day. He's gonna
15 go ahead and do it the next day, referring to the murder of
16 Robert Fingerhut.

17 And this Defendant's reply is, "Oh, no. Don't do
18 that," or, "What are you talking about?"

19 Her reply is, "Oh, I just wrote to you that I didn't
20 think you meant it."

21 And you'll read that in the letters, the numerous
22 letters of which there are almost 300 in this case.

23 You'll see during these phone calls and these

1 letters that she sends him money. She sends him things that
2 he needs so he can buy things from the commissary. She even
3 goes so far as to get him a subscription to the Youngstown
4 Vindicator because, my goodness, he's in prison. He doesn't
5 know what's going on in Youngstown. He needs to know the
6 news.

7 The next phone call you'll hear will be on November
8 8th, 2001. And you will find that this defendant had written
9 a letter dated November 11th, 2001 and you will hear the next
10 part of this case which is her hatred for Robert Fingerhut.
11 And you will hear, quote, you will read her words, quote, in
12 the letter of November 11th, 2001, "I would really love for
13 him to see me sucking that dick of yours just before he
14 leaves planet Earth. I wouldn't have to yell or swear or say
15 a word. That would be more than a sufficient send-off."

16 And during the phone call of November 8th, 2001,
17 Nate Jackson will comment about reading that letter of
18 November, that November 8th letter. And Nate Jackson will
19 say, "I was reading a letter where you wrote you would like
20 him to see you suck my dick before it goes away. I love
21 that." I asked if you -- "I asked you if we could do it like
22 that in my letter."

23 And on the phone you'll hear this defendant say,

1 "Mmm, of course."

2 She wants him dead and she wants him dead now.

3 During the course of those telephone calls, they do
4 decide to get a little bit smarter and they will eventually
5 refer and debate -- degrade Mr. Fingerhut's life to a
6 package. They will refer to Mr. Fingerhut as "the package"
7 and the death of Mr. Fingerhut and the murder of
8 Mr. Fingerhut will be referred to as the delivery of the
9 package.

10 On November 22d, 2001, there's a phone call. Mind
11 you, this is less than three weeks before Mr. Fingerhut was
12 ultimately murdered on November 11th, or I'm sorry,
13 December 11, 2001. Nate Jackson has to take care of
14 something else before he kills Mr. Fingerhut and that is he
15 has to have sex with this defendant. And Mr. Jackson says
16 that he was talking to some friends in prison and there's a
17 place called the Wagon Wheel Room in Boardman, Ohio. And he
18 tells this defendant to go put a deposit on the room because
19 it's quite a popular place for lovers in the area, seeing as
20 how it has a jacuzzi filled tub or a large, rather, walk-up
21 jacuzzi and it's sort of a lovers' rendezvous, a lovers' nest
22 in the area. He needs her to go there and make a deposit and
23 get the room for them.

1 The State will present to you evidence from credit
2 cards and receipts that, in fact, she went to the Wagon Wheel
3 and she got the room.

4 And Mr. Jackson requests for their little love
5 rendezvous that she wear some red panties because he wants to
6 see her in a red thong panties and that would be so romantic.
7 Well, you'll hear testimony from the people who rented that
8 room to this defendant, people who saw this defendant with
9 Mr. Jackson there, and they will also tell you that after
10 they checked out, low and behold they found some red thong
11 panties in the room which was rented, by the way, for
12 December 9th, Mr. Jackson's first day out of prison.

13 The evidence will show that she checked out that
14 room, she put the deposit on it, see left a pair of red thong
15 panties. You'll hear testimony from the credit card receipt
16 or about the credit card receipt and you'll hear testimony
17 about finding those red thong panties that she left there.

18 Now, back to the phone call of November 22d of 2001.
19 Nate Jackson reiterates on that phone call that he is going
20 to kill Robert Fingerhut the next day. And he says -- or she
21 says, rather, "I'm afraid, Nate."

22 And Nate Jackson asked her on that phone call what
23 she's afraid of. She doesn't say she's afraid of losing

1 Robert Fingerhut, the man she's lived with for twenty some
2 years. No. She's afraid of one thing, of losing Nate
3 Jackson. And she says, "I can't afford to lose you again."

4 She doesn't want Nate Jackson to go back to prison
5 again because it's tearing her up. And you'll read through
6 the course of these letters how much it pains her that Nate
7 Jackson is in prison.

8 Nate Jackson goes on to explain that he knows, in
9 fact, what he's doing in this case. And this defendant will
10 tell you on that phone call or tell Nate Jackson in that
11 phone call and you'll hear more evidence of their plan or the
12 delivery of the package. And this defendant says, "But what
13 was the story with the trunk and the handcuffs? That's too
14 involved. You're going to leave hair. You're going to leave
15 prints."

16 She's concerned about what evidence they may leave
17 if they commit this crime the way Mr. Jackson has discussed.

18 On November 24th, 2001, once again, Mr. Jackson
19 makes a collect call that's accepted by this defendant. And
20 you'll hear that telephone call. And Nate Jackson assures
21 her that he knows the laws in the State of Ohio. They won't
22 have his DNA so they don't have to worry about DNA.

23 She also goes on to discuss a number of cars that

1 she would like to buy for him, maybe a Lincoln, maybe a
2 Cadillac, and they talk about what he has to do the next day
3 after he gets out of prison. They both agree, as they do on
4 a number of occasions, that they'll talk about it later when
5 he gets out because they do know that the phone calls are
6 being recorded. Because each and every phone call, there is
7 a warning telling them that the phone calls are recorded.

8 Now we get to the most intriguing of the phone calls
9 you'll hear. December 8th, 2001. One day before Nate
10 Jackson gets out, three days before Robert Fingerhut is
11 murdered in his home in Howland Township. And he tells her
12 that it's better to be an older woman's heart than a younger
13 woman's fool. And she makes arrangements to spend the night.
14 They've already got it planned out. If you read the letters
15 and hear the phone calls, she's gonna tell Mr. Fingerhut, the
16 excuse she's going to give him is apparently she has a niece
17 that lives in the Cleveland area. And she's going to tell
18 Mr. Fingerhut that Saturday night, December 7th -- or I'm
19 sorry, December 8th -- she's gonna drive up to Cleveland and
20 spend the night with her niece and go to church the next
21 morning when, in fact, you'll read from the letters and the
22 phone calls that Mr. Jackson gets out of prison on Sunday,
23 December 8th, 2001, and he's released at 8:00 in the morning.

1 She's gonna pick him up and bring him back to the Wagon Wheel
2 and have their rendezvous. So she lies to Mr. Fingerhut
3 about where she's going.

4 She makes the arrangements. And on the December 8th
5 phone call, Mr. Jackson makes sure that they're going to
6 spend the night together. And she promises him that they
7 will.

8 And during that December 8th, 2001 phone call, in
9 the middle of the conversation, in fact, quite humorously,
10 although sadly for Mr. Fingerhut, Nate Jackson makes one
11 request of Donna Roberts for when he is going to kill
12 Mr. Fingerhut. And his quote is, "There's only one thing I
13 need. I need to be in the house."

14 And she says, "No, not in the house." She doesn't
15 want him killed in the house.

16 And finally, this defendant says, "Well, we'll talk
17 about it later," knowing full well she's going to see him the
18 next day.

19 You will hear the testimony and see the exhibits of
20 their first night together at the Wagon Wheel. Jose Flores
21 will identify the defendant as getting that room. He will
22 identify Mr. Jackson. You will also hear the testimony about
23 how she got that room and about the red thong panties. You

1 will hear their thoughts. They will express them to you.

2 They will talk about doing it.

3 The next piece of evidence, and the biggest portion
4 of evidence, you will have a box about the size of that
5 bankers box filled with letters. And those letters are the
6 next step of their hatred of Mr. Fingerhut, their love for
7 each other and their greed. And in those letters, she writes
8 with her own words and her own handwriting. First you'll
9 hear of her own hatred for Mr. Robert Fingerhut. You'll have
10 all these letters and you'll have all the time you need once
11 you deliberate to read these, this evidence. But I want to
12 give you a glimpse and a taste of the hatred that this
13 defendant had for Robert Fingerhut.

14 Quote, "Last night he said he wished he was dead.
15 That is one wish I hope comes true for him. I can't even
16 stand to look at him anymore. I hate it when he talks to me
17 too. I hate to look at him. I can't stand to even handle or
18 do his laundry anymore. I hate his face, hair, nose, eyes,
19 body. Everything about him makes me nauseous."

20 Her words. Her handwriting.

21 Then she says, "And, yes, sneaking to see you a
22 couple of hours doesn't do it. It leaves us both with no
23 real life together. And when you go your way, you have to

1 fend for yourself and eat alone and sleep alone and be out
2 with the wolves," because Nate Jackson is a street person
3 from the streets of Youngstown.

4 "And me, I exist in hell on earth. Like last night,
5 I got so sick of just looking at him and hearing the same
6 shit over and over and smelling his breath and every other
7 little thing. It's all bad. And seeing his skin and
8 watching him walk or breathe. I can't hold in my disgust and
9 contempt for him well at all."

10 Once again, her words. Her writing.

11 "So there's one extra time in my life I had to look
12 at him. Help me. That's one too many times for me. I have
13 never lived like this with so much animosity and hatred."

14 That's her telling you how much animosity and hatred
15 she has.

16 "And it's really hard since he has been controlling
17 the money for the last year or so."

18 We'll get to the greed in a minute.

19 On October 24th, 2001, she writes to Nate Jackson in
20 prison. "It is his birthday. He is 56." That's true.
21 Mr. Fingerhut did turn 56 on October 24th, 2001, the last
22 birthday he was alive.

23 She says, "He's 56. I can't stand to say his name

1 anymore. He is so totally crude now. My only birthday wish
2 for him is that this should be his last birthday."

3 And that's that. And, in fact, it was Robert
4 Fingerhut's last birthday.

5 Quote, "It's enough I have to go through with this
6 schmuck now, Robert. Sometimes I almost feel sorry for him.
7 Not. It's a good thing all the 38s were in the car because
8 when he slapped me real hard, I would have lost it and
9 emptied that all into his mouth."

10 Once again, these are her words. At one point,
11 she's referring to cleaning in a letter she writes to
12 Mr. Jackson. "My heart just isn't in it, especially because
13 he keeps saying it looks like a N blank blank blank blank
14 blank R house just because of some dust and stuff. Well, let
15 it look that way I say because soon it will be just that if I
16 have anything to say about it. Soon the door is going to
17 open and the wrong man is going to enter. I hope some day I
18 can just roll over and say good night to you," referring to
19 Mr. Jackson.

20 "He gets me so sick now I can barely stand it
21 anymore. I've been living with a moron for the last 20
22 years."

23 Once again, the testimony and the evidence will show

1 that they reduced Mr. Fingerhut's life to nothing more than a
2 delivery of a package. It was gonna be like a UPS delivery.
3 Knock on the door, be done with it, delivery's done.

4 These are her words again. "Ok. I'll only say
5 this. Go ahead and take care of business. I'm sorry about
6 the worry over the package. It's just such a major move and
7 with very serious consequences and severe. I can't stand
8 even to think about losing you again," referring to
9 Mr. Jackson.

10 "Do whatever you decide is best. If our prayers are
11 answered, we will be together next Thanksgiving."

12 She talks about enjoying the first snow of the year
13 together with Mr. Jackson. She talks about waking up
14 Christmas morning next to each other with Mr. Jackson.

15 "I've been thinking a lot about the delivery of that
16 package and I get real scared. All I worry about, though, is
17 losing you forever to prison. And the more complicated the
18 plan, the more that can go wrong. A fingerprint, a hair, an
19 article of clothing, a witness, the weapon. I will be in the
20 line of fire, too, and could end up you know where. We have
21 to make certain that all of this is as fool proof as it can
22 be. I guess we'll get it down when you get home. I'm so
23 worried about the delivery. I don't want to see you in

1 orange again, Nate. Do you really have the nerve and the
2 guts to deliver this package? What do you think about when
3 you think of doing it? Will you tell me everything about it?
4 It's a real shame that they have such advanced DNA testing or
5 I'd tell you to spit on the package while you were delivering
6 it. That's a mean thing to say and it's really not my
7 character to say such things, but this package just begs for
8 it, don't you think?"

9 Now, in addition to the hatred of Mr. Fingerhut, she
10 also has to feign grief because Mr. Fingerhut will die. How
11 is she going to feign this grief? She tells you how she's
12 going to feign this grief. She writes it in her letters.

13 "Once again, I worry about my reaction and any
14 authority's reaction to my reaction. I mean how do you
15 appear to be sad when you feel like throwing a party, but I
16 know I can do whatever I must for all to be well. I'm so
17 worried to think how I will be able to even act sorrowful.
18 There will be a lot of interrogations and perhaps a lot of
19 suspicion. Can we handle that?"

20 And quote, "It's all gonna come down to when I get
21 that call. And I can handle that because it means everything
22 to both of us," referring to Mr. Jackson.

23 "I am not even worried about it any longer because

1 I've thought about it a lot and I'm prepared. Instead of
2 laughing and cheering, I will concentrate on losing someone
3 that I would go nuts over and react accordingly."

4 That's how she's gonna react when she finds out
5 Mr. Fingerhut's dead.

6 Now the State is not required to show motive. But
7 in this case, she wrote the motive, she spoke the motive.
8 And that motive is on one of those three emotions, one of
9 those strong human emotions. And that emotion is greed. The
10 State will introduce evidence that will show there were two
11 life insurance policies out on Mr. Fingerhut's life, \$550,000
12 in life insurance on Mr. Fingerhut.

13 You will also hear testimony about the financial
14 condition, through her words, of the Greyhound bus terminals.
15 And I want you to keep this case in the context of
16 September 11, 2001. All of us remember that tragic day.
17 Probably each and every one of you remembers where you were
18 at. But the evidence in this case will show and the facts of
19 this case will show and you'll recall travel was way down.
20 People weren't going anyplace. People weren't flying. They
21 weren't even taking the buses. And she'll write in her
22 letters about how business is down, how they're not making
23 much money at the bus station. You'll hear testimony that

1 she really doesn't know much about the business. In fact,
2 the reason she doesn't work in the Youngstown terminal is
3 because she doesn't know how to use the computers. So what
4 better way to get out from this financial debt and to get out
5 from this bad business than to collect \$550,000 in insurance
6 money?

7 You will hear testimony about how her and
8 Mr. Fingerhut, it's in her own letters, had 52 credit cards.
9 You'll hear testimony about she refers to Mr. Fingerhut as
10 the Grinch, about how he controls her spending. She only
11 gets so much a month, a week, and she's used to having money
12 whenever she wants. But times are bad in late December and
13 November and October of 2001. People aren't traveling.
14 People aren't taking the Greyhound bus. You'll hear how the
15 business is down 30, 40, 50 percent. Through her own words
16 she'll tell you that. She's used to having money whenever
17 she wants. She's hoping that those days will return again
18 soon. And she tells Mr. Jackson that and her problems with
19 money and how she hopes that those days when she can spend
20 money again will return soon.

21 And she says, "Do whatever you want to him ASAP.
22 Amen. Yes, you can do whatever you want to accomplish our
23 goal."

1 She writes in the one of the letters, "I found out
2 that those things with the zeros are paid up to the end of
3 the year as per our accountant's suggestion. Yes, I didn't
4 want you to worry about that," writing to Mr. Jackson.

5 Why would Nate worry? Because you're gonna find out
6 he's gonna get a Cadillac out of this deal. He talks about
7 dreaming of a Cadillac Deville. And she talks about getting
8 him personalized plates. Nate Dog or Nathaniel or whatever
9 else might pop into their minds. In fact, I think in one of
10 the letters she refers to a personalized plate that says D
11 loves N. They'd like to get a little license plate to
12 express their love to the world. And she'll talk about that
13 and talk about how she'd like to express their love to the
14 world. What will people think when they see Mr. Jackson and
15 I walking down the street together, walking together, walking
16 through the malls? An older white woman like myself with a
17 young black man. We'll have to hold hands a lot so people
18 will know our, show the world our love.

19 Now, eventually this defendant looks into getting
20 Mr. Jackson the Cadillac that he so desires. She writes in
21 one of her letters, though, there's going to be some problems
22 because her and Mr. Fingerhut are leasing two Chrysler
23 300 Ms. Pretty nice cars. You'll hear testimony from

1 witnesses who will tell you that those cars were in
2 Mrs. Roberts' name. And what you're gonna hear basically is
3 at one point in their relationship, and she'll tell you, that
4 Mr. Fingerhut requested that all of the assets that Miss
5 Roberts and he had be placed in her name. And the first
6 thing they did was they got an official divorce.
7 Mr. Fingerhut was worried about being sued through the
8 terminals and losing everything. So they got this divorce of
9 convenience basically or really for financial reasons. They
10 still lived together. They transferred the house to her
11 name. She signed all the leases to the two vehicles they
12 owned. Even the Greyhound terminal, the Greyhound bus
13 business, was in her name. So she had everything. But don't
14 be mistaken. Mr. Fingerhut still drove the cars. He took
15 care of them. In fact, we will present testimony from Barry
16 Ricker and Carmen Olivia from Preston Auto Group out on the
17 strip out in Niles who will tell you that Mr. Fingerhut did
18 all the negotiating for the contracts and the leases, that
19 Mr. Fingerhut brought the vehicles in for service. That
20 Preston has a deal where if you buy a car, they'll wash it
21 every week or every month and detail it. And Mr. Fingerhut
22 predominantly was the one who brought those vehicles in. So
23 don't be fooled by who owns what because Mr. Fingerhut still

1 lives in that house and he still drives those cars.

2 But what you're gonna hear this defendant tell Nate
3 Jackson in one of those phone calls is that she can't really
4 get out of the lease after they kill Mr. Fingerhut so they'll
5 have to slum around in these 2000 and 2001 Chrysler 300 Ms.

6 Now Mr. Bailey and I were very forthright with you
7 when we started this case, each and every one of you when you
8 sat in that chair and were voir dired in this case. We told
9 you right from the beginning she's not the shooter. She's an
10 aider and abetter. And the Court will define that term for
11 you, but we usually use that term to mean help.

12 She talks at one point about someone else doing it.
13 And you'll read in the letters that she talks about getting a
14 professional delivery service. But Mr. Jackson is confident
15 that he can pull this off himself. And at one point she
16 says, "I really do believe you intend on taking care of
17 business. Here's how I feel about it. What size gloves do
18 you wear? Ok?"

19 Because Mr. Jackson is going to need some things to
20 commit this crime. He's going to need some gloves, he's
21 going to need the firearm, he's going to need to be in the
22 house, and he's going to need a ski mask. You will hear and
23 read her words. She looked all over. In fact, in one of her

1 letters, she said she had to look for four stores for that
2 ski mask. But you know what? She found it. She was real
3 proud of herself, proud that she got it for Mr. Jackson. And
4 she got the gloves. No, not the thick ones. She got thin
5 ones because they're easier to work with.

6 You'll hear testimony and you'll see exhibits that
7 she had guns. Now unfortunately, we never recovered the gun
8 that killed Robert Fingerhut. But, quite conveniently, about
9 two or three weeks before Mr. Fingerhut's murder, she reports
10 a gun stolen and to be stolen by a guy named Santiago Mason.
11 Boy, she writes these letters what a terrible guy he is. He
12 did all these terrible things. We are gonna hear from Mr.
13 Santiago Mason. Mr. Santiago Mason is gonna get on that
14 witness stand and he's gonna tell you, "I went to her house
15 one time. She wanted to have sex with me,"
16 Mr. Santiago Mason being the persuasion that she prefers, a
17 large black man. And Mr. Mason is gonna tell you, "I didn't
18 steal anything from her. She tried to set me up for murder."

19 And Mr. Mason will sit there and tell you how angry
20 she was when he rebuffed her sexual advances. And quite
21 coincidentally, a few days later, she goes to the Warren
22 Police Department to report a firearm stolen by Mr. Santiago
23 Mason. And she writes in her letters, "Oh, he said he's

1 gonna do bad things with it." Why not create a third party
2 to make it look as if the murder was committed not by Nate
3 Jackson and Donna Roberts, but by this bad Santiago Mason?

4 Now she goes on in her letters to aid and abet
5 Mr. Jackson. And she says, "I will have the gloves and the
6 rest waiting for your arrival. But why the handcuffs? I
7 would feel better if I knew this was gonna be quick and
8 painless."

9 In the same letter she says, "I would really love
10 for him to see me sucking that dick of yours just before he
11 leaves planet Earth. I wouldn't have to yell and scream or
12 say a word. That would be more than a sufficient send-off."

13 She also asks when she can't find a ski mask at one
14 point, she asks Mr. Jackson, "I can't find a ski mask because
15 the places I'm shopping at only have the knit caps. Any
16 suggestions?"

17 Finally she found that. She was so proud of
18 herself.

19 And the last thing that Nate Jackson needed and
20 you'll hear on that phone call December 8th, the one request
21 he made was that he needed to be in that house.

22 And the evidence and the testimony from the Howland
23 Police Department will be that at about midnight on

1 December 11th, 2001, they received a phone call from 254
2 Fonderlac. Miss Roberts had put herself into the mind set
3 that she needed to be like she talked about in the letters.
4 She wasn't gonna be happy and cheery. She had to think about
5 losing someone that she really cared about. And she cried
6 and cried. And the police will tell you she was so upset
7 they could hardly understand her. But they'll also tell you
8 that when they asked her to go to the bedroom in the house
9 that as they discussed the scene and what they had discovered
10 and Mr. Fingerhut with three bullet wounds, one through his
11 hand that entered the shoulder, one coming through the back
12 of his shoulder and then finally a fatal shot to the head,
13 they'll tell you that when they started to discuss things
14 that all of a sudden the sobbing and the crying stopped and
15 it was as if she was listening at the door. And they'd go
16 back and check on her and she'd start crying again. "How
17 terrible. My poor Robert."

18 Of course the police didn't know that there were all
19 these phone calls and letters at that time. They had no
20 reason to suspect Miss Roberts.

21 And the police will also tell you that they searched
22 that house. They walked around it. They looked at the
23 windows. They looked at the doors. There was no forced

1 entry. Someone had stealthily snuck in there or perhaps was
2 waiting for Mr. Fingerhut when he got home.

3 And the evidence and the testimony will show that
4 this defendant then gave statements to the Howland Police
5 Department. And she told them what she did. "Well, I went
6 out shopping and I went to Wal-Mart. In fact, here's my
7 receipt. Oh, I did have dinner at Red Lobster that night. I
8 went out and had dinner with Red Lobster. And Mr. Fingerhut,
9 well, he works the late shift at the Youngstown bus station
10 and he doesn't get to leave until the last bus comes in about
11 9:00."

12 And the State will present testimony to you showing
13 you that Mr. Fingerhut left the Youngstown terminal at about
14 9:30. In fact, you'll have the video tape from the security.
15 Now, the times are a little bit off on the tape, but you'll
16 hear testimony from one of the security guards that, in fact,
17 Mr. Fingerhut left about 9:30, his usual time. He was really
18 a creature of habit.

19 You will see phone calls between Miss Roberts and
20 Mr. Jackson because Mr. Jackson had this defendant's cell
21 phone. You'll have the records and the times. And when Miss
22 Roberts is questioned about this Nathaniel Jackson, she says,
23 "Oh, I haven't seen him since Sunday. I picked him up from

1 prison, but I haven't seen him since then."

2 Well, guess what? The State will present to you
3 evidence that she was with Mr. Jackson all day on
4 December 11th. The State will present testimony to you from
5 Kris Ellington who owns a hairstyling place right beside the
6 Warren bus terminal. Miss Ellington will tell you that this
7 defendant came in with an individual, Nate Jackson.

8 A bus driver who works for the Greyhound who stops
9 in at the 5:00 stop, he's the last stop at the Warren
10 station, he will tell you that when he came to, into the
11 station, he saw this defendant with Nate Jackson. Funny how
12 Miss Roberts neglects to tell the Howland Police that she was
13 with Mr. Jackson all day the day of the murder.

14 Then you will hear the testimony from Jill Kenyon.
15 She is a waitress at the Red Lobster out by the Eastwood
16 Mall. And Miss Kenyon will tell you, "Yeah, I waited on a
17 woman," who she identifies. And she'll also identify that
18 she was with Nate Jackson. She kind of forgot to tell the
19 police she was with Nate Jackson all day. She lied. And
20 that's what the evidence will show.

21 They had it all planned out. The gloves, being in
22 the home when Mr. Fingerhut arrives, the gun, reporting the
23 gun mysteriously missing a few weeks before. It's all

1 planned out. The handcuffs. But there was one thing they
2 didn't count on, one part of their plan that the evidence
3 will show didn't go the way they wanted it to. Mr. Fingerhut
4 was not gonna leave his house. When he walked into that
5 house and saw this black male there with a gun, he fought and
6 he struggled. And that's what the injuries will show you,
7 the hand up, the bullet through the webbing of the hand, the
8 bullet into the chest, the grazing wound on his shoulder as
9 he was trying to fight with his assailant.

10 And contrary to what Mr. Jackson's concerns and
11 knowledge of Ohio law and the DNA was, he was wrong. And she
12 was wrong. Because the evidence is going to show that Mr.
13 Jackson did leave DNA. He left DNA everywhere and
14 fingerprints everywhere. And the worst part about this case
15 is not what happened before. It's what happened afterwards.
16 Because Miss Roberts will tell you how grieving she was, how
17 terrible it was and you'll hear the police say, "Oh, she was
18 crying December 11th around midnight when we got there."

19 But she forgot to tell the Howland Police Department
20 one other piece of evidence that you'll have. She checked
21 Nate Jackson into a Days Inn Motel in Boardman between 10 and
22 12 on December 11 because Mr. Jackson had shot his finger
23 during the struggle and he had shot his index finger on his

1 left hand. He was injured. And she took him down to
2 Boardman, paid for it with her own credit card. Kind of
3 forgot to tell the Howland Police about that part.

4 When questioned by the Howland Police about
5 Mr. Jackson, "Oh, Nate would never do such a thing."

6 And the evidence will show that they made one other
7 mistake. It was a pretty big one. In addition to talking on
8 the phone, despite these repeated warnings, and they were
9 pretty careful on the phone, albeit, I'll admit that, they
10 didn't get rid of the letters. He kept all of hers and she
11 kept all of his. And in fact you'll see letters that she
12 wrote. In her letters, "Maybe we should get rid of these.
13 We should destroy all these parts or at least the pages where
14 we talk about Robert."

15 But she couldn't give 'em up. She couldn't get rid
16 of 'em because there was so much love for Nate Jackson in
17 those letters. And she'll tell you that. It's in her
18 letters. She couldn't destroy them because of the love that
19 she felt from Nate in those letters. And fortunately for the
20 Howland Police and you and the State of Ohio and for Robert
21 Fingerhut, we have those letters. And you will see those
22 letters. They are the evidence in this case.

23 You will hear a lot of testimony from forensics

1 people. The room that she got down in Boardman, the Days
2 Inn, Paul Monroe and this detective, Sergeant Dillon, went
3 down there. Paul Monroe got in a dumpster, he pulled out the
4 trash and he found gauze, tape, bandages from where Nate
5 Jackson had taped up his finger. And of course it's Nate
6 Jackson's DNA. BCI experts came in. They found Nate
7 Jackson's fingerprints in that room that was rented by her
8 for a week. Just like their plan. Just like the discussions
9 in the letter. He needed to get a place to stay to sort of
10 stay low until they could move in together before Christmas.
11 I guess apparently two weeks is all you need.

12 But the evidence in this case will show beyond all
13 doubt what I started out this morning telling you. They
14 thought about it, they talked about it, they wrote about it,
15 and they did it. And at the end of this case, it will be
16 Mr. Bailey and I's sworn duty to ask you to return verdicts
17 of guilty to all four counts, aggravated robbery, aggravated
18 burglary, aggravated murder with a death specification and
19 another count of aggravated murder. They planned it. They
20 set it up. Even though it was her house, it was
21 Mr. Fingerhut's home as well. It was his home that was
22 burglarized. It was his home that Mr. Fingerhut came home to
23 where he found Mr. Jackson stealthily planted in there in

1 preparation of this plan. It was his car that he drove. He
2 may not have owned it. They may not have been in his name,
3 but the evidence will show they were his just as much as they
4 were hers. At the close of this case, we will ask you to
5 return verdicts of guilty to each and every count and each
6 and every specification.

7 I want to thank you very much for your attention.

8 THE COURT: Thank you, Mr. Becker.

9 Does the defense wish to address the jurors?

10 MR. INGRAM: Yes, Your Honor. Donna
11 Roberts, pursuant to statute, will give the defense opening
12 statement.

13 **OPENING STATEMENT ON BEHALF OF THE DEFENDANT**

14 THE DEFENDANT: Good morning. Will the
15 real Donna Roberts please stand up? Ladies and Gentlemen,
16 the real Donna Roberts stands before you. The testimony and
17 evidence will establish that I played no part in Robert's
18 death. The Donna Roberts you'll hear portrayed in the
19 letters and on those tapes is not the real Donna Roberts.

20 My attorneys will test the State's evidence and ask
21 important questions in cross examination. Please, please
22 listen carefully for those questions.

23 Perhaps I'll have more to say later. Regardless, I

1 am not guilty. I am not guilty. And you'll know that when
2 this case is over.

3 Thank you.

4 THE COURT: Okay. Ladies and Gentlemen,
5 that concludes the opening statements.

6 Will counsel approach for a moment?

7 (Whereupon, a conference was held at the bench.)

8 THE COURT: Ladies and Gentlemen, you can
9 have about ten minutes to step aside if you wish. We're
10 going to start with the first witness then. The next phase
11 of the trial now will be the evidence. This will be the bulk
12 of what we do during the next couple weeks here. You're not
13 to discuss anything, form any opinion until you get back.
14 Okay? Let's make it about five after. Be back in the box,
15 please.

16 (Whereupon, a recess was had commencing at 10:53 a.m. and
17 concluding at 11:06 a.m.)

18 THE COURT: Is the State ready to begin
19 your case?

20 MR. BAILEY: Yes, Your Honor. The State
21 calls Christopher Monyak.

22 (Note: For further proceedings in this matter, please refer
23 to Volume XXIV.)

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REPORTER'S CERTIFICATE

This is to certify the foregoing represents a true and correct copy of the proceedings had in the aforementioned cause as reflected by the stenotype notes taken by me on the same.

1-7-04


Lori J. Rittwage, RPR
Official Court Reporter

IN THE COURT OF COMMON PLEAS

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	) Case No. 01-CR-793
Plaintiff	) Appeal No. 03-T-56
)
-vs-	) Judge John M. Stuard
)
DONNA M. ROBERTS,	) TRANSCRIPT OF PROCEEDINGS
Defendant	) VOLUME XXIV

Jury Trial proceedings on Tuesday, May 13, 2003 and
Wednesday, May 14, 2003

BEFORE: HONORABLE JOHN M. STUARD

AT: Trumbull County Court of Common Pleas
Courtroom Number 2
161 High Street, NW
Warren, Ohio 44481

APPEARANCES:

On behalf of the State of Ohio:

Messrs. Ken Bailey & Christopher Becker
Assistant Prosecuting Attorneys
Warren, Ohio

On behalf of the Defendant:

Messrs. John Juhasz & Gerald Ingram
Attorneys at Law
Youngstown, Ohio

Official Court Reporter: Lori J. Rittwage

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EXHIBITS:

State's Exhibit Number 403 marked for identification.... 5178

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1 TUESDAY, MAY 13, 2003

2 WHEREUPON,

3 CHRISTOPHER MONYAK,

4 having been first duly sworn, according to law, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BAILEY:

8 Q Good morning, Mr. Monyak. You want to tell the
9 Court and jury your full name?

10 A Christopher Monyak.

11 Q And tell us your place of employment and position?

12 A I'm the investigator at Lorain Correctional
13 Institution.

14 Q And how long have you been so employed?

15 A Approximately six years.

16 Q And your duties and responsibilities?

17 A Administrative investigations inside the institution
18 and assisting the state patrol in criminal investigations.

19 Q Okay. Now Lorain Correctional Institution, where is
20 that located?

21 A In Lorain County just southwest of Cleveland.

22 Q And approximately how many inmates and employees do
23 you have there?

1 A Approximately 2,000 inmates and a little over 500
2 employees.

3 Q Now, did there come a point in time when you were
4 called to assist in an investigation regarding an individual
5 by the name of Nathaniel Jackson?

6 A Yes, I was.

7 Q And who's Trooper Funelli?

8 A Trooper Funelli is a state patrol investigator. I
9 first knew him a couple years ago when he was the
10 investigator at Trumbull Correctional.

11 Q Now, were you able to determine whether or not
12 Nathaniel Jackson was incarcerated at Lorain Correctional
13 Institution?

14 A Yes, I was.

15 Q And how did you determine who Mr. Jackson was? Did
16 you need any identification data?

17 A Yeah. Trooper Funelli gave me some information,
18 name, social security number, date of birth, and I was able
19 to go back and search our records and determine that he was
20 incarcerated at Lorain.

21 Q Okay. And is each inmate given an inmate number?

22 A Yes, they are. When they enter the institution or
23 the department, they are given an inmate number that stays

1 with them through their incarceration.

2 Q Is that a unique number, unique to each individual
3 inmate?

4 A Yes, it is.

5 Q Now, when an inmate enters Lorain Correctional
6 Facility, are they processed in to the facility?

7 A Yes. Lorain is a reception center for all the
8 northern Ohio counties and they go through an orientation
9 process at Lorain and then they are shipped out to their
10 parent institutions.

11 Q And are inmates permitted to make telephone calls?

12 A Yes, they are.

13 Q Okay. Tell us about the telephone system and the
14 telephone process dealing with inmates at Lorain Correctional
15 Institution.

16 A When the inmates come in, they're issued their
17 inmate number, which is a six-digit number. They're allowed
18 to make phone calls while they're incarcerated. And part of
19 the process when they make a phone call is they have to enter
20 their unique pin number into the system. And once it
21 recognizes that pin number, it will authorize them to make a
22 phone call.

23 Q Okay. How many phones are there approximately

1 throughout the institution and throughout the different
2 housing units?

3 A There's approximately 57 phones. The way our
4 institution is divided up, there's normally four phones in
5 each of the housing units. We have about 12 or 13 housing
6 units.

7 Q Okay. And do you have time designations for inmates
8 to make phone calls?

9 A The phone system is on from 6:00 in the morning
10 until 11:00 at night. And of course during counts when
11 they're locked in their cells, they're not permitted to make
12 phone calls. And depending on which unit they're on, there
13 are certain designated times specific to that unit when they
14 can make phone calls.

15 Q Now when an inmate initiates a phone call, what do
16 they physically do?

17 A The first time that they actually make a phone call,
18 they enter in their pin number. It's an eleven-digit number
19 all together. The first digit indicates that they're a male
20 inmate; the next six digits is their inmate number, which is
21 a six-digit number; and then that's followed by a four-digit
22 date of birth, the month and then the day.

23 In that first phone call, they're prompted to record

1 their name, which is kept on the system. And then every
2 subsequent phone call after that, it calls up that recording
3 so the called party can know who's calling them.

4 Q Okay. Now, when those calls are made, is that
5 information recorded anyplace?

6 A Both the actual recorded phone call and the call
7 records are electronically recorded.

8 Q Okay. What about the entry of the pin number? Is
9 that logged also?

10 A Yeah. The date, time, the phone that's actually,
11 the phone number that's being called, the phone that the
12 inmate is actually making the call from. All that
13 information is recorded.

14 Q Okay. So if you looked at the pin number, you could
15 determine an inmate's institution number, along with his date
16 of birth from that information?

17 A Correct.

18 Q Okay. And those records that record the phone calls
19 electronically, are those records made at or near the time
20 that the call is being made?

21 A They're made, immediately after the phone call is
22 when all those records are saved to a computer.

23 Q Okay. And are those records maintained at the

1 facility?

2 A Yes, they are.

3 Q And how, how long are they maintained there?

4 A The actual electronic recording is on, stored for
5 approximately six months. The call record, which is the pin
6 number that was actually used and the number that was called,
7 is kept indefinitely.

8 Q Okay. And are those records kept in the regular
9 course of your doing business as an institution as a prison?

10 A Yes, they are.

11 Q And I take it the original records are kept at the
12 institution?

13 A Yes.

14 Q Now, can you tell us a little bit about the digital
15 recording system, this electronic system that you use? How
16 accurate is it and that type of information, security
17 features.

18 A Yeah. It's a computer-based program. And what it
19 does is at the conclusion of the call, it saves the recorded
20 conversation in electronic form to a hard drive. It's a
21 special type of recording. It's not a normal computer-type
22 recording. You need a special player that's provided by the
23 company that supplies the equipment to be able to play that

1 recording back.

2 Q Are there safety measures that prevent the recording
3 from being tampered with?

4 A Yeah. There's no way to access the call and to
5 change it in any way.

6 Q Okay. Now, to be able to listen to one of those
7 calls, what do you have to do when it's recorded on the hard
8 drive?

9 A Through the computer in my office, you're able to
10 call up those recordings. If I need to use the recordings in
11 court or outside the institution, I can copy them to a CD
12 along with the program that's used to open and listen to the
13 recordings.

14 Q Okay. Now is that part of your duties as an
15 investigator, as well as working the phone systems?

16 A Yes, it is.

17 Q Okay. And who's in charge of the phone system?

18 A The system is the same in all the institutions and
19 it falls on the investigator to oversee the process.

20 Q Okay. Who is your phone provider, phone service
21 provider?

22 A The equipment and the service is provided by MCI.

23 Q And what kind of training have you had with respect

1 to that phone system?

2 A We actually had a new system installed in '99 and it
3 was basically an upgrade to the old system that we had had,
4 and MCI came to the institutions and provided training on the
5 new system.

6 Q Okay. How about on the old system? Did you also
7 have training on that?

8 A Yes, we did.

9 Q Okay. And in your job as an investigator, are you
10 able to extract the phone calls from the system?

11 A Yes, we can.

12 Q And how do you do that?

13 A Through search reports, you can call up different
14 criteria such as I can enter an inmate's pin number and call
15 up all the recordings or conversations that were recorded
16 using that pin number. I can call them up by the destination
17 number, meaning the number that was called. You can call
18 them up just about, all the different search criteria I can
19 use to call it up.

20 Q Okay. And the phone calls are tracked under each of
21 those different scenarios?

22 A Correct.

23 Q Are they tracked by the phone call to, you said

1 destination, that's to where it's made?

2 A Yes. That is one of the criteria that's recorded.

3 Q Okay. And you can tell the, can you tell the
4 duration of the phone call?

5 A Yes. That's another factor that's recorded.

6 Q Okay. Did there come a point in time that you
7 compiled information with respect to an inmate by the name of
8 Nathaniel E. Jackson?

9 A Yes, I did.

10 Q Now I'm going to hand you what's been marked for
11 identification -- I'm gonna hand you what's been marked for
12 identification as State's Exhibit 360 and ask if you can
13 identify that. That's a plastic sleeve containing I believe
14 three pages?

15 A Yes.

16 Q Have you seen that before?

17 A Yes, I have.

18 Q Okay. And what is that?

19 A This is a search report generated by myself upon
20 Trooper Funelli contacting me and requesting that
21 information.

22 Q And what information was being requested?

23 A Basically he had identified inmate Jackson and he

1 wanted to know not only his phone calls or not only if he was
2 at the institution, but any phone calls and records that were
3 made while he was incarcerated.

4 Q Okay. Now, can you identify from that
5 Mr. Jackson's inmate number? Are you able to do that from
6 that document?

7 A Yes.

8 Q Okay. What is his inmate number?

9 A It is 399469.

10 Q And can you explain to the Ladies and Gentlemen of
11 the Jury where that information is located?

12 A There is approximately twelve columns of
13 information. Right in the middle of the report is a pin
14 number column and it's recorded, the inmate number along with
15 his date of birth.

16 Q Okay. And what was his date of birth?

17 A 02-13, which is February 13th.

18 Q Okay. So you use a four-digit date of birth code?

19 A Correct.

20 Q Okay. Now, when you generated this report, were you
21 able to determine how many phone calls were made?

22 A Yes.

23 Q How many?

1 A When I ran this report, I did it by Mr. Jackson's
2 inmate number and there were 72 phone call attempts that were
3 placed.

4 Q Okay. Using that pin number?

5 A Correct.

6 Q And how many, can you determine from that how many
7 had actually been recorded?

8 A Yes. There were 18 conversations or phone calls
9 that were accepted and recorded by the system.

10 Q Okay. This process that you have, it records the
11 phone calls that are being called?

12 A Pardon me?

13 Q It records the phone call that's being made on the
14 system?

15 A Correct.

16 Q Okay. You indicated, I believe, you could search by
17 the phone number that was called or the pin number?

18 A That's correct.

19 Q Okay. Are there any safeguards built into the
20 system with respect to three-way phone calls?

21 A The system has the capability of detecting and
22 terminating three-way phone calls.

23 Q Okay. What's a three-way phone call?

1 A Basically, the inmate can only make collect phone
2 calls. If he would call an individual and that person had
3 three-way calling, that person would be able to call an
4 additional number so the inmate could speak to people without
5 making an actual collect call to that person.

6 Q Okay. And your system that was installed at the
7 institution while Nate Jackson was there, does it prevent
8 that from happening?

9 A In a way, it does.

10 Q Can you explain?

11 A Yeah. What the system does is it will detect tones
12 or a ringing sound on the line. When an inmate calls, if the
13 person clicks off to dial that third number and clicks back
14 on and you're able to hear the ringing in the background, the
15 system will detect that and automatically terminate the call.
16 The inmates were, soon after this was implemented, the
17 inmates kind of found a way around it. They were able to
18 tell their, tell the people that they were calling, "Just
19 don't click over until that person answers," and that way the
20 system will never hear the ringing tone and that way it won't
21 detect the three-way call.

22 Q Okay. So there were 72 different phone calls
23 attempted; right?

1 A Correct.

2 Q And you indicated how many were accepted?

3 A Eighteen.

4 Q Of the 18 that went through, how many different
5 telephone numbers were called?

6 A Of the 18 calls that actually were accepted, they
7 were all to the same number.

8 Q And what is that phone number?

9 A Area code 330-609-7812.

10 Q Now is it possible that another inmate can use one
11 inmate's number to make phone calls?

12 A It is possible, yes.

13 Q Okay. In this particular case, was that issue
14 presented to you?

15 A Yes, it was.

16 Q And what, if anything, were you able to do?

17 A One of the things that I did after this report was
18 generated, I ran a search report specifically on that number,
19 the 330 area code number, and I was able to determine that
20 there were different pin numbers that were used to call that
21 number. Actually, there was only one other attempt using a
22 different pin number.

23 Q One other attempt using the pin number?

1 A Right.

2 Q Okay. Which -- now, the time frame of the 18
3 accepted phone calls, when did that occur? Between what
4 dates?

5 A The first one was accepted October 25th, 2001 and
6 the last one was accepted December 8th, 2001.

7 Q Now, during that time frame, were you able to track
8 Mr. Jackson's locations in the institution?

9 A Yes. Yes, we were.

10 Q And how many different locations was he in during
11 that time frame?

12 A He was in three different locations.

13 Q All in Lorain Correctional Facility?

14 A From October to December, yes.

15 Q Okay. So he was in, what, three separate housing
16 units?

17 A Three separate units, correct.

18 Q Had he moved back and forth between housing units at
19 any time or did he stay in one housing unit before he moved
20 to the second and stay there and move to a third? I mean
21 what did you find?

22 A Right. His initial placement was in our orientation
23 unit, which is 4B. Approximately a week later, he was moved

1 to a unit we call 4C. And then a couple of days later, he
2 was moved to his last unit, which was 8B.

3 Q Okay. And the pin numbers, did they correspond with
4 his move in the institution as well?

5 A Yes, they did.

6 Q Did there come a point in time when you were able to
7 track a nineteenth phone call that was accepted?

8 A Yes, I did.

9 Q Can you explain that?

10 A As I stated earlier, initially, after running this
11 report, I ran a second report just on the 330 area code
12 number and I was able to determine that there was an
13 additional call placed using a different pin number. And
14 basically what happened, when Mr. Jackson first arrived at
15 the institution, he attempted to use his pin number, but it
16 was not in the computer yet. After a couple of attempts, he
17 used another inmate's pin number and was able to get through,
18 but all subsequent calls after that were using his pin
19 number.

20 Q Okay. So you were able to connect that phone call
21 as well?

22 A Right. And that was made from the unit that he was
23 initially placed in.

1 Q Okay. Now I'm gonna hand you what's been marked as
2 State's Exhibit Number 361. Can you identify that?

3 A Yes, I can.

4 Q How are you able to identify it?

5 A It has my handwriting on it, and it's a CD
6 containing the 19 phone calls that were placed by inmate
7 Jackson.

8 Q Okay. And does it list -- okay. And does it have,
9 what name and number is on that?

10 A It has N Jackson 399469, which is his inmate number.

11 Q And are there dates that are listed on there?

12 A Yes. It states 19 calls to Donna Roberts between
13 October 5th, 2001 to December 8th, 2001.

14 Q Okay. What actually, what is that CD? I mean what
15 do you --

16 A There's --

17 Q How do you create that?

18 A There's a CD burner which is common today. It's on
19 the phone computer. And basically what I do is I put the
20 computer files which contain the recordings into a file
21 that's copied onto this CD. So actually, there are 20 files
22 on this CD, 19 of which are phone calls and the twentieth is
23 the actual player which is used to play back the recording.

1 Q Okay. And the original, the original recording of
2 that, that's kept on the computer at the institution?

3 A That's correct.

4 Q And is this a true and accurate copy of those phone
5 calls?

6 A Yes, it is.

7 Q And you made that CD?

8 A I made the CD.

9 Q Okay.

10 A Yes.

11 Q Okay. I'm gonna hand you what's been previously
12 marked for identification as State's Exhibit 276-C containing
13 four pieces of paper that are marked 276-C-1, 276-C-2,
14 276-C-3 and 276-C-4. Okay? I'm gonna ask you if you can
15 identify that envelope.

16 A The envelope has what we call a property control
17 form for the State Patrol, which any time that they handle
18 evidence, it basically tracks the chain of custody for the
19 evidence.

20 Q Okay. And is there an inmate number on that?

21 A Yes, there is.

22 Q And what is that?

23 A 399469.

1 Q Okay. And can you look at the four documents
2 inside?

3 A (Witness complies.)

4 Q Okay. Do those contain inmate numbers?

5 A Yes, they do.

6 Q And what numbers are those?

7 A Again, 399469.

8 Q That's on all four forms that are inside that
9 envelope?

10 A Yes.

11 Q Okay. And is that the same inmate number that you
12 had previously given us with respect to Nathaniel Jackson?

13 A Yes, it is.

14 Q Now, were you asked to collect these particular
15 documents at some point?

16 A Yes. My initial contact with Trooper Funelli was
17 dealing with the phone calls and then subsequent
18 conversations dealt with these forms.

19 Q Okay. And what are those forms basically?

20 A Basically, as I stated earlier, we're a reception
21 center for northern Ohio. When they first come into the
22 system, a lot of information is collected about them. One of
23 the forms that we have here, which is C-1, deals with their

1 employment history. C2 deals with their religious
2 preference. It's just one of the many documents that we
3 generate when they first come into the system.

4 Q Okay. And the other two forms?

5 A The other two forms are, one is a clothing box list
6 and the other one is a food box list. And basically what
7 these are are a list of items that were sent to him at his
8 prior institution, which was Belmont Correctional
9 Institution.

10 Q Okay. Those original documents, were those kept by
11 Lorain Correctional Institution originally?

12 A Yes.

13 Q And were they done -- were they prepared at or near
14 the time that they're filled out?

15 A The two forms, C-1 and C-2, would have been prepared
16 his first week at the institution. The other ones, the food
17 box list and the clothing box list, were actually written by
18 someone else, attached to the box that was sent in. And then
19 after the box was sent in, the items were issued to
20 Mr. Jackson, he signed for 'em and then the record, the list
21 was kept on the record.

22 Q Okay. And those are all kept as part of doing
23 business as a correctional institution?

1 A Correct.

2 Q Now, and I take it your previous warden was Linda
3 Thomas?

4 A That's correct.

5 Q And she would have had care, custody and control of
6 those initially?

7 A Correct.

8 Q She's no longer with your institution?

9 A Correct.

10 Q And I take it, you testified that you had collected
11 those documents for her; right?

12 A Yes, I had.

13 Q Okay. And to whom were they turned over?

14 A Turned over to Trooper Funelli on April 14th, or I'm
15 sorry, April 17th, 2002.

16 Q And that was by, you recognize the writing on there?

17 A By Linda Thomas.

18 Q Your warden?

19 A Correct.

20 Q Okay. Were you there?

21 A On that particular day, I was not at the
22 institution.

23 Q Okay. You recognize your writing though? You're

1 familiar with it?

2 A Yes. Yes, I do.

3 Q Okay. And I take it, are you familiar with Trooper
4 Funelli's writing?

5 A Yes.

6 Q Okay. Is that his writing?

7 A Yes.

8 Q Now, these phone calls that are on the CD, State's
9 Exhibit Number 361, could you determine approximately how
10 long the phone calls were, each of the phone calls that
11 Mr. Jackson made?

12 A Yeah. One of the criteria that the report records
13 is the duration of the phone call. The system is set up to
14 limit the phone calls to ten minutes, and the vast majority
15 of the phone calls that he made were the full ten minutes.

16 Q What happens at the end of ten minutes?

17 A Approximately one minute prior to the ten minutes
18 being up, it'll give a notice that there's 60 seconds left.
19 And then at ten minutes, it will just cut off.

20 Q Approximately how many phone calls are attempted out
21 of the institution on a daily basis?

22 A We have 2,000 inmates. We probably average 2,000 to
23 3,000 phone call attempts every day.

1 Q Okay. Now, because these calls are recorded, is
2 there any type of warning that comes on when you're on, using
3 the telephone, a collect call from the institution?

4 A Yeah. Initially, when you first make a collect
5 call, the person that's receiving the phone call will hear a
6 recording indicating that the call originates from a
7 correctional institution and it will not only identify the
8 inmate with that recording that he makes during his first
9 phone call, but it'll also tell you which institution the
10 call is coming from.

11 And then once you accept the phone call,
12 periodically throughout that phone call, there will be a,
13 it's called a voice layover, which basically states that the
14 call originates from, in this case, Lorain Correctional
15 Institution and that it may be monitored and/or recorded.

16 MR. BAILEY: Okay. Excuse me one moment.

17 Thank you, Mr. Monyak. Defense counsel will have an
18 opportunity to address you.

19 MR. INGRAM: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. INGRAM:

22 Q Morning, Mr. Monyak. How are you?

23 A Good morning.

1 Q My name is Gerry Ingram. John and I represent
2 Donna, and we just have a couple questions.

3 A Okay.

4 Q You're in charge of internal, internal
5 investigations within the Lorain Correctional Institution and
6 you assist the Ohio State Patrol in other investigations; am
7 I correct?

8 A That's correct.

9 Q So when a call is made out, it has to be made
10 collect?

11 A All phone calls are collect, correct.

12 Q And the first thing that the person receiving that
13 call hears is the name of the person placing the call, that
14 it's coming from a particular institution and that the call
15 may be recorded or monitored; am I correct?

16 A Well, the initial item that the person that's
17 receiving the call will hear is a computer-generated voice
18 basically identifying the call as a collect phone call, it
19 will indicate what institution it's from and then the name of
20 the person is actually in the voice of the person placing the
21 phone call or the pin number that's being used to place that
22 phone call.

23 Q Okay. But the mechanical voice at the beginning of

1 the call informs the person receiving the call that the call
2 may be recorded or monitored; correct?

3 A Correct.

4 Q And then periodically throughout the call, there is
5 this mechanical voice again that speaks up and says,
6 "Warning, this call is from an institution and may be
7 recorded or monitored"?

8 A Not in those words, but, yeah, it does state that.

9 Q How often is that recorded or monitored warning --

10 A It's basically, it's programmed at a random time.
11 Therefore, the inmates don't know that it's, when it's gonna
12 come up. But during a ten-minute phone conversation, it
13 comes up at least twice.

14 Q And as part of your job responsibilities, do you
15 have the capability to listen to outgoing telephone calls in
16 real time?

17 A Yes, we do.

18 Q So if you wanted to, you could actually listen to a
19 telephone call as an inmate was making it?

20 A That's correct.

21 Q Is there an orientation or some type of proceeding
22 where when people get to Lorain they are somehow informed of
23 the rules and regulations of the institution?

1 A Yes, there is.

2 Q And in that orientation, for lack of a better term,
3 are the inmates told that the telephone calls are recorded
4 and subject to real-time monitoring?

5 A Not only are they told in the inmate handbook,
6 there's a sign posted above each phone indicating that all
7 calls are recorded and/or monitored and then, of course, you
8 have the voice overlay during the phone call which both the
9 inmate and the called party can hear.

10 Q Okay. So there's at least three warnings? The
11 first one you get in orientation?

12 A Right.

13 Q And then you have 57 phones and they're divided up
14 into banks of four in each housing unit and there'd be a sign
15 up that says, "Hey, these phones are recorded and monitored,"
16 and then you have the mechanical voice within the call
17 itself?

18 A Correct.

19 Q Are they told the purpose of their unique pin
20 number?

21 A Well, basically they're informed that to be able to
22 make a phone call, they have to use their pin number.

23 Q Are they informed that that pin number is unique to

1 them?

2 A Yes.

3 Q And when you first got a request from Trooper
4 Funelli, you ran your search based on Mr. Jackson's unique
5 pin number?

6 A That's correct.

7 Q Later, you ran a second search and you, you ran that
8 search on Donna Roberts' telephone number; am I correct?

9 A On the number that the phone calls went through. I
10 ran it on that number, yes.

11 Q And that second search indicated one extra call,
12 which made a total of 19?

13 A Correct.

14 Q That nineteenth call would have been the first in
15 point of time?

16 A That's correct.

17 Q It wouldn't be all that hard to disguise or use
18 somebody else's pin number, would it?

19 A No, it wouldn't be.

20 Q All you got to do is get someone to cooperate with
21 you, tell you what their inmate is, what their date of birth
22 is and you can then use somebody else's number; correct?

23 A Correct.

1 Q With the 18 calls that you discovered in your first
2 search, was any effort made by Mr. Jackson to disguise his
3 individual pin number or use somebody else's pin number?

4 A Not that I could see, no.

5 MR. INGRAM: May I have one moment, Your
6 Honor.

7 Thank you very much, sir. No further questions.

8 THE COURT: Any redirect?

9 MR. BAILEY: No redirect, Your Honor.

10 THE COURT: Sir, we thank you. You are
11 excused.

12 THE WITNESS: Okay. Thank you.

13 MR. BAILEY: We're seeing if we have
14 another witness here. Frank Reynolds.

15 THE COURT: Mr. Bailey, is this a rather
16 short witness?

17 MR. BAILEY: I would expect we should be
18 able to get it done by noon.

19 * * *

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1 WHEREUPON,

2 FRANK REYNOLDS,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BAILEY:

7 Q Good morning, Mr. Reynolds.

8 A Good morning.

9 Q Do you want to tell the Court and jury your full
10 name and let me move this just a little bit closer. Okay.

11 A My name is Frank Edward Reynolds.

12 Q Okay. And, sir, how old are you?

13 A Age 28.

14 Q And where do you live?

15 A Youngstown.

16 Q Okay. Whereabouts in Youngstown?

17 A 1724 Oakland Avenue.

18 Q Okay. And are you presently employed?

19 A No.

20 Q Okay. Now I'm gonna direct your attention back a
21 bit to December of 2001, okay, about 17, 17 months ago.

22 Where were you working at that time?

23 A I was working for Greyhound.

1 Q Okay. And who did you work for?

2 A I worked for James Daniels and Bob Fingerhut.

3 Q Okay. And Bob Fingerhut, how long did you know him?

4 A About eight or nine years.

5 Q Okay. And how did you, you met him, how did you
6 first meet him?

7 A When he opened the restaurant in the terminal there.

8 Q In Youngstown?

9 A Yes.

10 Q Okay. And did you share any interest in any,
11 anything that he collected?

12 A I got a jersey shirt and that from the Steelers and
13 that.

14 Q He collected sports memorabilia?

15 A Yeah.

16 Q Okay. Now -- and did you become friends?

17 A Yes.

18 Q Okay. And how did, and did he give you a job at the
19 Greyhound terminal there?

20 A Yeah. Part time.

21 Q Okay. What kind of part-time job did you have there
22 at Greyhound?

23 A Loading the buses, unloading.

1 Q Okay. And how long did you work there?

2 A I worked there from around, around Thanksgiving.

3 Q Of 2001?

4 A Yes. To July 9th of 2002.

5 Q Okay. And did you, what happened at that time?

6 A I just quit.

7 Q Okay. Now, would you go there before the time you
8 started working there to the Greyhound bus station?

9 A Yes.

10 Q And did you also go to the restaurant?

11 A Yes.

12 Q And how long were you going to the Greyhound
13 terminal and the restaurant?

14 A I've been going there for five or six years.

15 Q Okay. And where did you eat?

16 A I eat at the restaurant there.

17 Q At the Greyhound station?

18 A Yes, sir.

19 Q And did you do, did you do that throughout the
20 summer of 2001?

21 A Yes.

22 Q And you were, so you did the baggage there; right?

23 A Yes, sir.

1 Q You mentioned this other fellow, James Daniels, was
2 it?

3 A Yes.

4 Q Okay. What did he do there?

5 A He was the ticket agent and he was my supervisor.

6 Q Okay. Now, and was there another fellow that worked
7 with you?

8 A Yes. Melvin Williams.

9 Q Okay. And what hours would you work?

10 A I worked from 7 to 9 that night.

11 Q Okay. And how did Robert Fingerhut treat you? How
12 did you get along with him?

13 A We got along real good.

14 Q Okay. And you would help him doing the baggage on
15 the buses?

16 A Yes, sir.

17 Q And whatever he'd tell you to do?

18 A Yes.

19 Q Now, did you get to know Donna Roberts?

20 A I met her when I went in to the restaurant.

21 Q Okay. And do you see her today in this courtroom?

22 A Yes.

23 Q Can you point her out?

1 A She's right over there.

2 MR. INGRAM: We'd stipulate.

3 Q Is this the person to whom you're referring?

4 A Yes.

5 MR. BAILEY: May the record reflect that
6 the witness identified the defendant?

7 THE COURT: The record will so reflect.

8 Q (By Mr. Bailey) Now, did there come a time where you
9 saw the defendant with somebody by the name of Nate?

10 A Yeah.

11 Q And did you see the defendant and this Nate
12 together?

13 A Yes.

14 Q Okay. When would that have been?

15 A Between mid summer.

16 Q Of 2001?

17 A Yes.

18 Q Okay. Did you ever see -- well, let me go back for
19 a sec.

20 At that time, how did the defendant look? Did her
21 hair color look the same?

22 A She had dark red hair.

23 Q Dark red hair at that time?

1 A Yeah.

2 Q Okay. And did you ever see the defendant, Donna
3 Roberts, and this Nate fellow and Robert Fingerhut all
4 together at the same time?

5 A No.

6 Q Did you ever see this Nate fellow with Robert
7 Fingerhut?

8 A No.

9 Q Now, I want to direct your attention to Monday,
10 December 10th, 2001. Did you work that day?

11 A Yes.

12 Q Okay. And that particular day, do you remember when
13 you were there that day, on December 10th?

14 A I was there in the morning.

15 Q In the morning?

16 A From morning until, until the evening.

17 Q Until when?

18 A Until the evening, at 9:00.

19 Q Until the evening. Until the evening. Okay. Now,
20 did you see Robert Fingerhut that day?

21 A He came in at 2:45.

22 Q Okay. 2:45 in the afternoon that day?

23 A Yes.

1 Q Okay. And did you -- okay. Did you see that day
2 the defendant and Nate Jackson? Or I mean Nate. This
3 fellow, Nate.

4 A Between the hours of 10 and 10:45 a.m.

5 Q Okay. And where did you see them?

6 A In-between the double doors.

7 Q Okay. Where are the double doors located?

8 A Outside -- in-between the main entrance of the
9 terminal.

10 Q Okay. Now, let's go to that December 10th at about
11 2:45 in the afternoon when you saw Robert Fingerhut. Did the
12 defendant come in to the terminal that day?

13 A Yes.

14 Q And what happened?

15 A We were sitting in the ticket agent's office and we
16 heard a knock at the door and Mr. Fingerhut opened the door.

17 Q Okay. You were with Robert Fingerhut?

18 A Yes.

19 Q Okay. And who was at the door?

20 A Miss Donna.

21 Q Donna Roberts?

22 A Yes.

23 Q Okay. And what happened?

1 A She, she came in, shut the door and she, she looked
2 like she was nervous.

3 Q Okay. What made you think she was nervous?

4 A Cause the way she was shaking.

5 Q She was shaking?

6 A Yes.

7 Q Okay. And did she say anything?

8 A She asked Bob for \$3,000.

9 Q She asked Robert Fingerhut for \$3,000?

10 A Yes.

11 Q And what did he tell her?

12 A He said he wasn't giving her no money.

13 Q Okay. And what did, what was her reaction to that?

14 A She gave him the dirtiest look like --

15 Q Okay. A dirty look?

16 A Yeah.

17 Q Now, is that the first time you ever saw any
18 hostility between Donna Roberts --

19 MR. INGRAM: Objection.

20 A Yes.

21 THE COURT: Objection sustained.

22 Rephrase.

23 Q (By Mr. Bailey) Okay. Had you ever seen her do

1 that before?

2 A No.

3 Q Okay. Now on Tuesday, December 11th, 2001 around 10
4 in the morning to 10:45 in the morning, you were at the
5 Youngstown Greyhound bus station?

6 A Yes.

7 Q Okay. And at that time, do you see the defendant
8 and this Nate together?

9 A Yes.

10 Q Okay. What's this Nate look like?

11 A Tall, skinny black guy.

12 Q Okay. This is when you said you saw them between
13 the two sets of doors?

14 A Yes, sir.

15 Q What was this defendant doing with Nate?

16 A Hugging him, kissing, talking to him.

17 Q Okay. Now, I'm gonna direct your attention to about
18 8:45 to 8:55 that evening, okay, on December 11th of 2001.
19 Were you at, did you end up at the Greyhound bus station
20 there in Youngstown?

21 A Yes.

22 Q And why did you go there?

23 A To pick up my paycheck.

1 Q Okay. And at that time, did you come into contact
2 with or see Robert Fingerhut?

3 A I see Bob Fingerhut because he's the one gave me my
4 paycheck.

5 Q Okay. Where was he?

6 A Behind the ticket agent.

7 Q Okay. Behind the ticket agent. That's at the
8 ticket counter?

9 A Yeah.

10 Q Okay. Now, do you remember what kind of car Bob
11 Fingerhut drove?

12 A It was a gold car.

13 Q It was a what?

14 A A goldish tannish car like.

15 Q Okay. Did you ever see him drive a silver 2001
16 Chrysler?

17 A That's the one.

18 Q Okay. Okay. And that particular car, how often did
19 you see him drive that?

20 A Mostly every day.

21 Q Okay. Did you ever see the defendant, Donna
22 Roberts, driving that car?

23 A No.

1 Q Okay. Did you ever see her drive it once maybe?

2 A No.

3 Q Now, did you ever see Robert Fingerhut again after
4 that night?

5 A No, sir.

6 Q Do you know what kind of car or what color car Donna
7 Roberts drove back then?

8 A All I know, it was a red car.

9 Q The defendant drove a red car?

10 A Yes, sir.

11 MR. BAILEY: Okay. Thank you. Defense
12 counsel will have an opportunity to ask you some questions.

13 MR. INGRAM: Your Honor, I'd actually
14 request a luncheon recess at this point. I would request a
15 luncheon recess at this point.

16 THE COURT: Oh, okay. You're able to
17 return after lunch?

18 THE WITNESS: Yeah.

19 THE COURT: Okay. We thank you.

20 Ladies and Gentlemen, be back here at 1:00. You are
21 not to discuss anything in the interim about this case or
22 form any opinions. The evidence has just started. You all
23 have a nice lunch. Thanks.

1 (Whereupon, a recess was had commencing at 11:55 a.m. and
2 concluding at 1:06 p.m.)

3 THE COURT: I think you were told
4 previously, but the media is not allowed to photograph the
5 jury if you're concerned about that.

6 Mr. Ingram, where is our witness?

7 MR. INGRAM: I believe he's on the bench
8 in the hallway, Your Honor.

9 THE COURT: For the record, this is the
10 cross examination of the witness from this morning,
11 Mr. Reynolds. Please continue.

12 CROSS EXAMINATION

13 BY MR. INGRAM:

14 Q Mr. Reynolds, how are you this afternoon?

15 A Pretty good.

16 Q I just have a couple questions for you if I may.
17 How long did you say you knew Robert Fingerhut?

18 A For eight to nine years.

19 Q Eight or nine years. How did you come to know him?

20 A When I always go into the bus station to see my
21 friends.

22 Q So you met him at the Greyhound bus station in
23 Warren?

1 A No.

2 Q In Youngstown?

3 A In Youngstown.

4 Q You do not know him outside of the Greyhound bus
5 station in Youngstown; am I correct?

6 A Exactly.

7 Q You would go to the Greyhound bus station in
8 Youngstown to socialize with your friends and, as I
9 understand your testimony, also to eat on occasion?

10 A Yes.

11 Q And there was a restaurant there and the name of
12 that restaurant was Just the Ticket?

13 A Exactly.

14 Q Did Donna help run the restaurant called Just the
15 Ticket?

16 A Yes, she did.

17 Q And back when you would go to the Greyhound bus
18 station to the restaurant, were you receiving disability
19 benefits?

20 A Yes.

21 Q When you worked for Mr. Fingerhut, were you
22 receiving disability benefits?

23 A Yes.

1 Q And how were you paid by Mr. Fingerhut?

2 A Cash.

3 Q And I assume that that cash was not reported to any
4 governmental agency?

5 A Exactly.

6 Q Now during the nine years that you would go to the
7 bus station and socialize and eat, would you on occasion see
8 Robert and Donna together at the bus station?

9 A Sometimes.

10 Q And the only time you ever saw the two, either of
11 them or the two of them have a disagreement was the
12 disagreement you told us about on the afternoon of December
13 11th; correct?

14 A Exactly.

15 Q When you would go to the restaurant, would you call
16 Donna Roberts Miss Donna?

17 A Yes.

18 Q Would you on occasion at the end of the month run
19 out of money?

20 A No.

21 Q No? She ever give you free food at that restaurant?

22 A No.

23 Q Now on the afternoon of Tuesday, December 11th,

1 right around 2:45 or 3:00 in the afternoon, you are in the
2 Greyhound office talking with Mr. Fingerhut; am I correct?

3 A Yes.

4 Q And that's when Donna knocks at the door?

5 A Yes.

6 Q Does she open the door or do you or Mr. Fingerhut
7 have to open the door?

8 A Mr. Fingerhut.

9 Q So Mr. Fingerhut opens the door and Donna enters the
10 room?

11 A Yes.

12 Q When she enters the room, does she ask you to leave?

13 A No.

14 Q And it's at that time that she asks Mr. Fingerhut
15 for \$3,000?

16 A Yes.

17 Q Now earlier that day, I believe you said at about
18 10:45 in the morning, you saw Donna Roberts and Nate Jackson
19 at the Greyhound bus terminal in Youngstown; is that right?

20 A Yes.

21 Q And they were standing in-between the double doors?

22 A Yes.

23 Q And those doors, are those wooden doors or are those

1 glass doors?

2 A Glass doors.

3 Q So you can see through these glass doors?

4 A Yes.

5 Q From either side; correct?

6 A Yes.

7 Q As a matter of fact, you can see, we're gonna call
8 the area between the doors the vestibule; okay?

9 A (Witness nods head.)

10 Q You can actually see the vestibule from all four
11 sides; correct?

12 A Yes.

13 Q And it's your testimony that at around 10:45 or
14 11:00 in the morning Donna Roberts and Nate Jackson are
15 standing in that vestibule kissing and hugging?

16 A Exactly.

17 Q For you and all the world to see; correct?

18 A Yes.

19 Q Now after that incident, does Donna come up to you
20 and say, "Hey, Frank, please don't tell Robert"?

21 A She didn't come up to me.

22 Q She didn't ask you to forget what you had seen?

23 A Nope.

1 Q Do you tell Robert what you had seen?

2 A I didn't tell Robert what I seen.

3 Q And there were other employees there that morning,
4 were there not?

5 A Just James Daniels.

6 Q Well, he is another employee; correct?

7 A Yes.

8 Q Now how about Melvin? Melvin was not there?

9 A Melvin Williams works on the weekends.

10 Q Were there customers about, do you know?

11 A There was customers for WRTA local buses and for
12 Greyhound.

13 Q I guess we should back up and establish that. The
14 Greyhound terminal is also the bus station for the Youngstown
15 buses known as WRTA; correct?

16 A Yes, sir.

17 Q So the vestibule where you say Donna and Nate were
18 standing and kissing, there would be customers walking in and
19 out of those two sets of doors; correct?

20 A Yes.

21 MR. INGRAM: No further questions.

22 THE COURT: Any redirect?

23 MR. BAILEY: No questions.

1 THE COURT: Mr. Reynolds, you're excused.
2 We thank you, sir.

3 MR. BECKER: Your Honor, I hate to take a
4 break so soon, but I need a few moments to set something up
5 here. Maybe just five or ten minutes.

6 THE COURT: How long?

7 MR. BECKER: Ten minutes.

8 THE COURT: Ten minutes. That's fine.

9 The jury, you may be comfortable where you are and wish to
10 continue sitting there. He has to take a few minutes to set
11 up a video display apparently. You're welcome to get out of
12 the box if you wish, stretch your legs.

13 You're not to discuss anything or form any opinion
14 until you return.

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1 WHEREUPON,

2 GERALD FUNELLI,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Would you introduce yourself to this jury, please?

8 A My name is Gerald Funelli. I am employed with the
9 Ohio State Highway Patrol.

10 Q And just for the record, could you spell your last
11 name for our court reporter?

12 A F-u-n-e-l-l-i.

13 Q And what are your, what is your current position at
14 the State Highway Patrol?

15 A I'm assigned to the district four office of
16 investigative services. That district takes care of
17 northeastern Ohio from Ashtabula down to East Liverpool.

18 Q And what are your current job duties?

19 A My current job duty is identity theft and crimes
20 that occur inside state institutions. I investigate those.

21 Q That would include state penal institutions?

22 A Yes, sir.

23 Q And what state penal institutions are located in

1 your area or in your district?

2 A We have three state correctional facilities that are
3 inside district four, which is Warren District headquarters;
4 Lake Erie Correctional, which is up in Conneaut, Ohio;
5 Trumbull Correctional, which is located on the west side of
6 Warren; and the Ohio State Penetentiary, which is located on
7 the east side of Youngstown.

8 Q Pursuant to that job description, have you ever been
9 called upon in your current duties to assist other law
10 enforcement agencies?

11 A Yes, sir.

12 Q And have you ever been called to assist other law
13 enforcement agencies with investigations or things they may
14 need from other penal institutions that are not located in
15 this district?

16 A Yes. Usually the way I get the information or to
17 assist if the case is within our district or from outside our
18 district, one of the district investigators from where that
19 crime occurred will contact me because there's an inmate
20 incarcerated in one of our three penal institutions to assist
21 them in that.

22 Q What types of crimes have you investigated over the
23 years where you've given assistance to other law enforcement

1 agencies?

2 A Homicides, auto theft rings, identity theft, drugs
3 being transported inside the institutions, credit card fraud.

4 Q A number of them?

5 A Yes.

6 Q I want to direct your attention to I believe it was
7 December of 2001, and I believe your department or your
8 services were requested by the Howland Police Department; is
9 that correct?

10 A Yes.

11 Q Do you recall the nature of why your services were
12 required by the Howland Police Department?

13 A Yes. On Friday morning, December 14th of 2001,
14 Detective Frank Dillon contacted me at my office in Warren,
15 well, in Southington, but at the Warren district
16 headquarters, and he basically briefed me that they're
17 investigating a homicide that occurred in their township and
18 they, one of the suspects was incarcerated in the state penal
19 institutions in Lorain and they asked if I could assist them
20 in obtaining some information from that facility to assist
21 them in the investigation of the homicide.

22 Q And to be clear, then, Lorain is not one of the
23 institutions that you would normally handle in this district

1 where you work; is that correct, sir?

2 A No, sir.

3 Q But because you do that for this district, you had
4 the contacts and the wherewithal to contact the individuals
5 that needed to be contacted at the Lorain Correctional
6 Institution?

7 A Yes, sir.

8 Q All right. And that's what you did in this case?

9 A Yes. I contacted our district three investigator,
10 Trooper Weber, who handles Lorain Correctional. He, in turn,
11 turned me over to the institutional investigator, Chris
12 Monyak, who takes care of Lorain for the Department of
13 Corrections. I contacted him with the information that I was
14 provided to obtain on Nathaniel Jackson.

15 Q And you were given the name from Detective Dillon of
16 Nathaniel Jackson; is that correct?

17 A Yes.

18 Q What other information, identifying information
19 relating to Nathaniel Jackson, were you given?

20 A His social security number. There is a list of
21 telephone numbers that they wanted searched through the
22 institutional database, recordings that they have to see if
23 phone calls were made by him to these numbers.

1 Q And in fact the information that you had requested
2 was actually given to you at some point; is that correct?

3 A Yes, sir.

4 Q And explain in what form and how this information
5 came to be in your possession.

6 A On Tuesday, the following Tuesday, which would be
7 December 18th if I'm correct, I contacted Investigator Monyak
8 at Lorain Correctional and he advised me that he ran inmate
9 Jackson's information through the phone system and obtained a
10 total of 18 phone calls that were made through his pin
11 number. Through the course of this, we found out that there
12 was one other phone call that was made prior to those 18 that
13 was made on someone else's pin number to one of the numbers
14 that was supplied to me and we were able to identify that
15 caller as Nathaniel Jackson.

16 Q Based upon that information, then, did you actually
17 physically retrieve an exhibit from Investigator Monyak at
18 the Lorain Correctional Institution?

19 A Yes. On Tuesday, the 18th of December, I drove up
20 to Lorain. Investigator Monyak supplied me with a CD rom
21 which contained the phone calls.

22 Q All right. Now I'm gonna hand you what's been
23 marked previously as State's Exhibit 361 and ask if you

1 recognize State's Exhibit 361?

2 A Yes. This is the CD rom that I obtained from
3 Investigator Monyak.

4 Q All right. Is that CD in the same or substantially
5 the same condition as when you retrieved it in December of
6 2001?

7 A Yes, sir.

8 Q What did you do with State's Exhibit 361 after you
9 obtained it?

10 A I brought it back and I turned it over to the
11 prosecutor's office to --

12 Q Howland Police Officer?

13 A Howland Police Officer Monroe, Paul Monroe.

14 Q Now the chief, was Detective Sergeant?

15 A Yes.

16 Q At the time, he was a sergeant? Or you maybe don't
17 know that.

18 A I think that's what he was.

19 Q All right. Did you obtain any other information
20 from Investigator Monyak?

21 A Yes. To identify the phone calls and the date and
22 time, he supplied me with a printed copy of the phone calls
23 that list the length of time, the numbers that were called,

1 which phone station they were called from.

2 Q Okay.

3 A And I think some information regarding visitation
4 lists.

5 Q All right. I'm gonna hand you a three-page document
6 that's been marked as State's Exhibit 360 and also some
7 paperwork listed as 276 C-1, 2, 3 and 4. There are actually
8 four pages. And I am going to ask if you recognize these
9 items?

10 A Exhibit, State's Exhibit 360 is the call detail
11 report that I obtained from Investigator Monyak.

12 Q And is that in the same or substantially the same
13 condition as when you first obtained that from Investigator
14 Monyak?

15 A Yes, sir, it is.

16 Q Okay. And do you recall or are you familiar with
17 the other exhibit there that I believe is 267? Or I'm sorry.
18 It's 276-C-1, C-2, C-3 and C-4?

19 A Yes. State's Exhibit 276-C-3 is an inmate packing
20 list. It's a list of the items that were in his possession
21 and --

22 Q Upon his release or upon his entry?

23 A Let me see what this was. It was dated 4-18-01.

1 Q Okay.

2 A And State's Exhibit 276-C-4 is a standard food
3 packing list, and that is dated 4-16-01.

4 And State's Exhibit 276-C-1 is the inmate's
5 employment history and special services that we conducted
6 while he was in the institution.

7 And State's Exhibit 276-C-2, this is intake service
8 form. It lists his religious services that he requests.

9 Q Are all those items in the same or substantially the
10 same condition as when you first obtained them?

11 A Yes, sir.

12 Q Okay. What did you do with State's Exhibits 360 and
13 State's Exhibits 276-C-1, 2, 3 and 4 after you obtained them
14 from Investigator Monyak?

15 A I hand-delivered them to I think it's Frank Dillon,
16 his unit number is 412, on 4-17 at 2:52 p.m.

17 Q All right. And that's noted on the jacket of that
18 manila envelope you're holding?

19 A Yes, sir.

20 Q And that's basically the envelope that you
21 transported them from Lorain to the Howland Police Department
22 in?

23 A Yes, it is.

1 Q Okay. Now, Officer, go ahead and put those back in
2 that envelope.

3 A (Witness complies.)

4 Q I want to ask you, at some point, were you asked to
5 listen to the 19 phone calls and were they actually put on an
6 audio tape at some point?

7 A I listened to them on CD rom and then I also had the
8 transcripts and compared them that way and then the tapes, I
9 also listened to and compared them to the transcripts.

10 Q All right. I'm going to hand you what's been marked
11 for purposes of identification as State's Exhibits 362
12 through and including 378 and ask if you recognize what those
13 exhibits are? Or actually, I'm sorry. It's 362 through 381.
14 I'm sorry. They may not be in order.

15 A No, they're not, but, yes, these are the tapes that
16 I listened to.

17 Q And how do you recognize that those are the tapes
18 that you listened to?

19 A On the top right-hand corner, I put a check mark on
20 each one of the tapes.

21 Q And you did so after you listened to each and every
22 one of those tapes?

23 A Yes. And I compared them to the transcripts that I

1 received.

2 Q Now I'm gonna hand you State's Exhibits 362-A
3 through 381-A and ask if you recognize those. Again, they
4 may not be in order.

5 A These are the transcripts that I compared the tapes
6 to.

7 Q And were you able to determine, listening to those
8 audio tapes and comparing those to the transcripts, were
9 there any substantial corrections that were required?

10 A No, sir.

11 Q All right. And I believe you also listened -- well,
12 I'm sorry. Strike that.

13 I believe there was also a transcription made of a
14 composite, I guess, of those phone calls that were put on a
15 tape that was marked as, that was marked as State's Exhibit
16 397 and a transcript marked as 397-A that was basically a
17 boiled-down version of those transcripts and those phone
18 calls; is that correct?

19 A Yes.

20 Q And you were able to listen to that composite tape?

21 A Yes, sir.

22 Q And the composite tape, as well as the
23 transcription, were there any substantial corrections to be

1 made in that transcript?

2 A No, sir.

3 MR. BECKER: Okay. Your Honor, at this
4 time, I'd like to dim the lights at this time and play
5 State's Exhibit 397 for this witness.

6 THE COURT: Very well.

7 (Whereupon, State's Exhibit Number 397 was played for the
8 jury commencing at 1:35 p.m. and concluding at 2:10 p.m.)

9 Q (By Mr. Becker) Officer Funelli, we've just heard
10 State's Exhibit 397 and you, I believe, reviewed and
11 testified previously that you reviewed the transcript of that
12 phone call marked as 397-A. Is that a fair and accurate
13 composite of some of those phone calls that you listened to?

14 A Yes, sir.

15 Q All right. And does the transcript identified in
16 397-A have any substantial corrections to it based upon those
17 tapes that, or the tape that was recorded and marked as
18 State's Exhibit 397?

19 A No, sir.

20 MR. BECKER: All right. Your Honor, I
21 have nothing further of this witness.

22 THE COURT: Cross?

23 MR. INGRAM: No questions.

1 THE COURT: Trooper, thank you very much.

2 THE WITNESS: Thank you, Your Honor.

3 MR. BECKER: Your Honor, we have the next
4 witness. And perhaps we should take this down. Should we
5 take our break a little early before the next witness?

6 THE COURT: Yeah. Maybe you should get a
7 breath of fresh air. Let's take ten minutes. You are not to
8 discuss anything or form any opinion until you return.

9 (Whereupon, a recess was had commencing at 2:11 p.m. and
10 concluding at 2:24 p.m.)

11 THE COURT: Mr. Bailey, you may call your
12 next witness.

13 MR. BAILEY: Your Honor, the State calls
14 Patrolman Albert Ray from Howland Township PD.

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1 WHEREUPON,

2 ALBERT RAY,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BAILEY:

7 Q Officer, do you want to tell the Court and jury your
8 full name, place of employment and position?

9 A Officer Albert Ray with the Howland Township Police
10 Department.

11 Q And how long have you been so employed?

12 A Twenty-six years.

13 Q And your duties and responsibilities?

14 A General patrol.

15 Q Okay. Now I'm gonna direct your attention to
16 December 12th, 2001 at approximately one minute after
17 midnight. Were you on duty on that date and time?

18 A Yes, sir, I was.

19 Q And at that time, did you have occasion to be
20 dispatched somewhere?

21 A Yes.

22 Q Okay. And what occurred?

23 A We received a call from the 9-1-1 Center of a

1 hysterical caller on the line with the 9-1-1 Center from
2 Avalon Drive. Myself and Officer Pollcino were dispatched to
3 the scene.

4 Q Was that at 254 Fonderlac, Southeast?

5 A Yes, sir, it was.

6 Q And in what township, county and state?

7 A It was in Howland Township, Trumbull County, State
8 of Ohio.

9 Q Which township?

10 A Howland Township.

11 Q Okay. And how long did it take you to get there?

12 A Approximately two to three minutes.

13 Q When you arrived there, what did you observe?

14 A Upon initial arrival, myself and Officer Pollcino
15 parked on the roadway in front of the residence. And when we
16 looked at the residence, we observed a white female standing
17 in the front entrance of the residence with the front door
18 open and yelling hysterically and kind of screaming and
19 hollering and trying to attract our attention as we exited
20 our vehicles.

21 Q Okay. What did you do?

22 A We both walked up to who was later identified as
23 Donna Roberts. We met her about half way in the yard. She

1 was yelling and screaming about her husband who was lying in
2 the kitchen. She, we weren't able to make out exactly what
3 she was saying due to her hysterical nature.

4 Q Okay. This person you identified as Donna Roberts,
5 do you see her in the courtroom today?

6 A Yes, sir, I do.

7 Q Can you point her out?

8 A Sitting at the defense table in the dark.

9 MR. BAILEY: Let the record reflect that
10 the witness identified the defendant.

11 THE COURT: The record will so show.

12 Q (By Mr. Bailey) What happened then?

13 A At that time, my partner, Officer Pollcino, consoled
14 Miss Roberts as I entered the residence. As I entered the
15 front door, I looked around and saw a living room to my right
16 and a dining room leading into a kitchen area on my left. I
17 proceeded into the kitchen area and, at that time, observed
18 what appeared to be a white male laying on the floor at the
19 entrance to a door leading into the garage.

20 Q Okay. Did you observe any signs of life with this
21 white male?

22 A No, sir, I did not.

23 Q What did you do then?

1 A Proceeded to look around the immediate area of the
2 kitchen and garage area which, at that time, I observed what
3 appeared to be a nickel, or correction, a blue steel revolver
4 on the one step leading down to the garage which was
5 approximately two steps lower in elevation than the kitchen
6 floor.

7 Q What, if anything, did you observe in the garage?

8 A In the garage, I observed a vehicle, I don't recall
9 the exact, it was a Chrysler product, but it was in the
10 right-hand side of the garage.

11 Q Do you remember the color of this vehicle?

12 A I believe it was a goldish color, bronze color.

13 Q Did you mark --

14 A It wasn't well lit in the garage when I was in
15 there.

16 Q Afterwards, were you able to determine the color?

17 A I don't recall at this time, no.

18 Q Okay. Do you note it in your report?

19 A Yes, sir, I do believe I did.

20 Q Do you need to look at your report?

21 A Yes, sir, I would.

22 MR. INGRAM: Go ahead.

23 THE WITNESS: Yes, sir. It was a red in

1 color Chrysler 300.

2 Q (By Mr. Bailey) Okay. Now, what -- what, if
3 anything, do you notice about the main garage door?

4 A The garage door, at that time, was down, in a closed
5 position.

6 Q Okay. What did you do next?

7 A I proceeded to look around the residence. Not
8 knowing whether this was how this victim succumbed to his
9 death, immediately proceeded to establish a crime scene just
10 in case.

11 At that time, I went back and found my partner who
12 was in the living room with Miss Roberts and spoke to him,
13 indicated what I had found and asked him to console her until
14 the paramedics would arrive shortly afterwards.

15 Q Okay. Did the paramedics arrive eventually?

16 A Yes, sir. Within the next five to ten minutes, they
17 were on the scene.

18 Q Okay. Now before the paramedics got there, what did
19 you do?

20 A I took an initial search around the house looking
21 for any signs of possible damage to the exterior or the
22 perimeter of the house and could find no signs of a break-in
23 or any signs of damage to any of the entrances or exits.

1 Q Did you locate -- during the search of the
2 residence, did you find any signs of any forced entry?

3 A None whatsoever.

4 Q Now, what happened then?

5 A In approximately five to ten minutes, as I
6 indicated, the paramedics arrived and were talking to Miss
7 Roberts.

8 At that time, I instructed Officer Pollcino to check
9 the exterior of the residence for any signs of evidence or,
10 and/or suspects of any type. And he came, reported back to
11 me shortly afterwards and indicated no, there were no signs
12 of the exterior of the house being forced.

13 Q Okay. Now, what did you do after that?

14 A At that time, I also initiated phone calls to our
15 investigators and also our chief of police at that time and
16 notified them of the, what the, what we had at that time.

17 Q Who were the detectives that you notified?

18 A The investigators at that time were Sergeant Frank
19 Dillon and Sergeant Paul Monroe.

20 Q Okay. And since then, Officer Monroe has changed
21 positions?

22 A He has been promoted to the chief of police.

23 Q Now, what happened next?

1 A Basically, we secured the residence. Upon the
2 initial arrival of the EMS personnel, the paramedics, one of
3 them walked over to the deceased and checked him for any
4 signs of life, at which time they indicated to me that there
5 were no signs of life, and we secured the scene until the
6 investigators arrived.

7 Q Now, did both of the detectives get there?

8 A Yes, sir.

9 Q And what happened then?

10 A They conducted a crime scene search of the area and
11 notified the coroner, who arrived afterwards, during which
12 time Miss Roberts was in the, at one point, she was in the
13 bedroom of the residence, her bedroom, and I was in there
14 talking to her at the time and Sergeant Monroe came in to the
15 bedroom, explained to Miss Roberts that the house is a crime
16 scene and that we would need to process the crime scene and
17 search for any suspects and/or evidence at that time.

18 Miss Roberts' reply was, "Do whatever you have to do
19 to catch the bastard."

20 Q Now, while you were at that house, did you observe
21 the defendant, Donna Roberts?

22 A Yes, sir, I did.

23 Q And how did she appear during the time that you

1 observed her?

2 A In the approximately one to two hours that I was in
3 contact with her, she had emotional highs and lows during
4 which when she would appear to be sobbing, there was a lack
5 of tears. There was the emotional part of it, but I didn't
6 notice any tears coming from her eyes.

7 MR. BAILEY: Okay. I'm done asking
8 questions now. Defense counsel will have an opportunity to
9 ask you some.

10 THE COURT: Cross?

11 CROSS EXAMINATION

12 BY MR. INGRAM:

13 Q Good morning or good afternoon. How are you? You
14 talked to Donna at one point in time in her bedroom?

15 A Yes, sir.

16 Q Was she in her bedroom at points in time alone?

17 A I don't recall.

18 Q Do you recall if family relatives, relatives of
19 Donna, were asked to come to the Fonderlac address and help
20 console her and maybe take her to their home?

21 A Yes, sir. I believe there was a call made to
22 relatives in Austintown.

23 Q And were you there when that occurred, when they

1 arrived?

2 A I do believe I was in the residence. I don't
3 remember seeing them come in the door though.

4 Q Were you there when they departed?

5 A I believe so. I don't recall at this time.

6 Q Was she restricted in what she could take from the
7 residence?

8 A I don't know. It --

9 Q Do you know if her movements in the residence were
10 monitored by any police officer?

11 A Only when she was in my presence did I monitor what
12 I observed.

13 Q I take it that neither of the detectives that
14 arrived, and that would be Detective Dillon and Detective
15 Monroe, who's now the chief, neither of them asked you to
16 monitor Donna's movements while she was in the house?

17 A I don't recall that.

18 Q You indicated that there was a paramedic. Would
19 that be a Howland Fire Department paramedic by the name of
20 George Beck?

21 A Yes, sir.

22 Q You, at some point in time, entered the kitchen; am
23 I correct?

1 A That is correct.

2 Q And Mr. Fingerhut is lying on the ground?

3 A On the floor of the kitchen, yes.

4 Q And there was blood on the ground?

5 A There was puddles of blood.

6 Q Did you notice what appeared to be any footprint
7 impressions in the puddles of blood on the kitchen floor?

8 A I don't recall at this time.

9 Q You do, do you still have your report or did
10 Mr. Bailey take it back?

11 A I believe Mr. Bailey has it.

12 Q Just let me know when you're done.

13 A Yes, sir.

14 Q All right. So my question is does your report make
15 any mention of footprint-type impressions in the puddles of
16 blood on the kitchen floor?

17 A It appears not.

18 Q It appears not. So your answer is no?

19 A That's correct.

20 Q Well, it's a two-page report, is it not?

21 A It's approximately a page and a half.

22 Q And you've had adequate opportunity to read that one
23 page and a half?

1 A (No response.)

2 Q Have you had an adequate opportunity to read that
3 document?

4 A Yes, sir.

5 Q There is no mention in that document of footprint
6 impressions in the pools of blood in the kitchen floor;
7 correct?

8 A That is correct.

9 Q When you noticed the gun, the gun is actually on a
10 step in the garage; am I correct?

11 A That is correct.

12 Q I think we should back up and describe this. If
13 you're in the garage, there's one step into the kitchen?

14 A It's -- that's correct. One step up into the
15 kitchen.

16 Q And the gun that you have told the jury you found
17 was on that step from the garage into the kitchen?

18 A That is correct.

19 Q It was not in Mr. Fingerhut's hand?

20 A No, sir.

21 Q It was not next to Mr. Fingerhut's body?

22 A It was in close proximity, within a foot or two, of
23 his head which was laying towards the open door.

1 Q But his head was inside the kitchen; correct?

2 A That is correct.

3 Q After you found the gun, was your attention then
4 drawn to that particular step?

5 A Yes, sir.

6 Q Did you notice any type of footprint impression on
7 that step?

8 A Not as I recall.

9 MR. INGRAM: May I have one moment?

10 THE COURT: Yes.

11 MR. INGRAM: No further questions.

12 THE COURT: Any redirect?

13 MR. BAILEY: Just one question.

14 **REDIRECT EXAMINATION**

15 **BY MR. BAILEY:**

16 Q Officer, as the first responding officer to that
17 scene, are you responsible for collecting the evidence or
18 crime scene processing?

19 A Basically just securing the crime scene until the
20 investigators arrive.

21 Q Okay. And then it's up to other officers to handle
22 the processing?

23 A Yes, sir.

1 Q And taking photographs and collecting evidence?

2 A Yes, sir.

3 MR. BAILEY: Okay.

4 THE COURT: Any recross?

5 MR. INGRAM: Yes.

6 RECROSS EXAMINATION

7 BY MR. INGRAM:

8 Q You're the first police officer on the scene, you
9 and Officer Pollcino?

10 A That's correct.

11 Q You're the first police officer inside the kitchen?

12 A Yes, sir.

13 Q And before Detectives Monroe and Dillon arrive, you
14 tell the medical personnel that they can go into the kitchen?

15 A That's correct.

16 Q How many of them entered the kitchen? Do you know?

17 A To the best of my knowledge, just paramedic George
18 Beck.

19 Q Do you recall if he was wearing tennis shoes?

20 A I do not recall at this time.

21 MR. INGRAM: No further questions.

22 THE COURT: Anything further at this time?

23 MR. BAILEY: No further questions.

1 THE COURT: Thank you, Officer. You may
2 step down.

3 I understand that exhausts the State's witnesses for
4 the day?

5 MR. BECKER: Yes, sir. We had some
6 unfortunate consequences with some of the witnesses.

7 THE COURT: Yeah. I understand. That's
8 fine.

9 Ladies and Gentlemen, we're going to adjourn for the
10 day. Couple people that were supposed to be here to testify
11 had matters come up that was, they were unable to be here.
12 We're going to have a full day of testimony tomorrow.

13 I would again remind you not to watch anything on
14 TV, read anything in the newspaper or have any discussion
15 with anybody about the case. You all have a nice evening.
16 We'll see you back here tomorrow. We'll try and get started
17 at 9 if possible. Okay? Thank you very much.

18 (At 2:40 p.m., court was adjourned to Wednesday, May 14,
19 2003.)

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1 WEDNESDAY, MAY 14, 2003 AT 9:12 A.M.

2 THE COURT: Good morning, folks.

3 State ready to proceed with your evidence?

4 MR. BAILEY: Yes, Your Honor. The State
5 calls Jill Kenyon.

6 WHEREUPON,

7 JILL KENYON,

8 having been first duly sworn, according to law, was examined
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BAILEY:

12 Q Good morning. Miss Kenyon, do you want to tell the
13 grand jurors and the Court your full name and where you live?

14 A Jill Kenyon, Warren.

15 Q Okay. And where do you work?

16 A Red Lobster in Niles.

17 Q And your position there?

18 A Server.

19 Q And how long have you been employed at the Red
20 Lobster in Niles?

21 A Five years.

22 Q Okay. Now, where is that in Niles?

23 A It's on the strip right in front of the mall.

1 Q Okay. And about how far is that from downtown
2 Warren here?

3 A About five, ten minutes.

4 Q Okay. And how long -- and have you always been a
5 server or a waitress?

6 A Yeah.

7 Q Okay. What shift do you typically work?

8 A It varies. Sometimes lunch, sometimes dinner.

9 Q Okay. Now, was there a point in time when some
10 police officers came and talked with you about some customers
11 that came to the Red Lobster?

12 A Yes.

13 Q And do you remember what department those officers
14 were from?

15 A Howland.

16 Q Now, I'm gonna direct your attention back to
17 December 11th of 2001; do you remember that date?

18 A Uh-huh.

19 Q And do you remember in particular some customers
20 coming in that you described to the police officers?

21 A Yes.

22 Q Okay. What do you recollect about those particular
23 customers?

1 A She was an older white female. He was a younger
2 black male.

3 Q Okay. And do you remember what color hair she had?

4 A Red.

5 Q And when you say she was older, what do you mean?

6 A Mid-fifties.

7 Q And how about the male?

8 A He was young, about 30.

9 Q Okay. Now, as part of your duties of being a
10 waitress, did you take orders from these people?

11 A Yes.

12 Q And what's the system at Red Lobster? How do you
13 process those orders?

14 A When I ring it in, they keep track of everything.
15 Like they can keep track of exactly what time everything was
16 rang in. Like if the drinks were ordered first, you can keep
17 track of what time the drinks were rang in. And then
18 whenever the order was rang in, it'll keep track of what time
19 that was done too.

20 Q Okay. Let me move that microphone just a little bit
21 closer.

22 A Okay.

23 Q Let's try that now. And how, how do you keep track

1 of it? I mean is there some type of system you use?

2 A Yeah. It's a computer system. Yeah.

3 Q And do you remember what this couple ordered?

4 A Yeah. King crab legs and crab-stuffed flounder.

5 There was a vodka martini and a Long Island Iced Tea.

6 Q Now do you remember who had what?

7 A I think he had the king crab legs and she had the
8 crab-stuffed flounder.

9 Q Okay. Now, the order sheet, does it show every time
10 you take an order?

11 A Yes.

12 Q And sometimes if you get a drink order, you might
13 have appetizers and dinner and dessert. Does all that
14 reflect on your order?

15 A Yes.

16 Q Now I'm gonna hand you what's been marked, I'm gonna
17 hand you what's been marked for identification as State's
18 Exhibit 314. It's a cellophane envelope and inside of it are
19 some exhibits, 314-A, 314-B, 314-C and 314-D. I'm gonna ask
20 you to look at those and see if you can identify those.

21 A Yes. This first one here is the time that, it's the
22 drinks, it's what the drinks were and what time the drinks
23 were rang in.

1 Q Is that 314-A?

2 A Yes.

3 Q Okay. And what's 314-B? Oh, let me go back to
4 314-A. Does it show the date and time?

5 A Yes. Where's it at? It says 12-11. This is the
6 day it was printed though I do believe.

7 Q Okay. December 11th?

8 A Yes.

9 Q And does it show your name on there?

10 A Yes.

11 Q As being the waitress?

12 A Uh-huh.

13 Q And does it reflect the time in military time?

14 A Yes. I'm sorry. Yeah. 1754.

15 Q Is that 314-A?

16 A Yeah.

17 Q Okay. And that shows the drink order?

18 A Uh-huh.

19 Q Okay. That's at, what, the bottom of this? 1754.
20 Does it show -

21 MR. INGRAM: Your Honor, we would
22 stipulate that 314-A shows the drinks that were ordered at
23 1754 military time, which is 5:54 regular time.

1 THE COURT: Very Good. So stipulated.

2 Q (By Mr. Bailey) Okay. Now, do you remember --
3 okay. What's 314-B?

4 A This is what time the food was rang in.

5 Q And what time was that?

6 A 1800.

7 Q So 6:00 --

8 A Yeah.

9 Q -- in real life?

10 A Uh-huh.

11 Q Non-military time. Okay. And 314-C?

12 A Okay. There was a soft drink that was rang in at
13 the end. I'm sorry. That was 1820, which would be 5:20.

14 Q 18 -- 6 something? Twelve from eighteen is six?

15 A Okay.

16 Q 6:20?

17 A Uh-huh.

18 Q In the evening?

19 A Yeah.

20 Q Okay. And Exhibit 314-D, what's that reflect?

21 A I think it's just another, is it another copy of the
22 order? Or there was a coffee. There was another coffee that
23 was rang in.

1 Q Okay. Okay. So -- and 314-E?

2 A And that is what time they cashed out.

3 Q And what time was that?

4 A 1843.

5 Q 6:43. So they were there from 5:47 until 6:43?

6 A Yes.

7 Q Okay. Now --

8 (Whereupon, a discussion was had off the record with

9 counsel.)

10 Q (By Mr. Bailey) Let me go back to 314-A; okay? The
11 time that's on the top there, that 17:47:16, what is that?

12 A This was the time the drinks were first rang in.

13 Q Okay. So -- and you had mentioned, I believe, 1754.
14 What was that?

15 A That was what time the drinks were rang in.

16 Q Okay. But what's at the top of the order? That's
17 another order?

18 A Yeah. That's another order. That's not me.

19 Q Okay. So their order was which one, the 5:54?

20 A Yeah. Yeah.

21 Q Okay. Not the 5:47 order?

22 A No.

23 Q Okay. So they were there from 5:54 ordering until

1 they cashed out at 6 -- what is that?

2 A 6:43.

3 Q 6:43. Okay. Now, I'm gonna hand you -- oh, when
4 they got done with the food order and being served and
5 eating, you present them with some kind of a bill?

6 A Yeah. It's the final guest check.

7 Q I'm sorry. The final?

8 A Guest check.

9 Q Guest check.

10 Now, I'm gonna hand you what's been marked for
11 identification as State's Exhibit 315, okay, and I'm gonna
12 ask you to turn that over and see if you can identify that.

13 A Yeah. That's the final guest check. That's the one
14 they were given in the end.

15 Q Okay. And does it list a date?

16 A December 11th.

17 Q Of 2001?

18 A Uh-huh.

19 Q And does it list the time?

20 A Yeah. 6:43.

21 Q And does it list a server?

22 A Yes. It's me.

23 Q Okay. And it reflects their order?

1 A Okay. Uh-huh.

2 Q Okay. What was the amount of that?

3 A 51.77.

4 Q \$51.77?

5 A Yes.

6 Q Now when the police came to you after that -- I take
7 it the police came to you after, sometime after that?

8 A Yeah.

9 Q And did they ask if you were able to identify the
10 people who, whom you had served?

11 A Yes.

12 Q Okay. And did they show you anything?

13 A Yeah. Actually, what they showed me was this
14 paperwork here and then they showed me my final guest check.

15 Q Okay. And then after that, did the police -- well,
16 I'm gonna show you what's been marked for identification as
17 316. Let me hand you what's been marked for identification
18 as 316. Okay. Can you identify that?

19 A Yes. It was the lineup they originally showed me.

20 Q Okay. A photographic lineup?

21 A Uh-huh.

22 Q Okay. And were you able to recognize anybody in
23 that series of photos?

1 A Yes.

2 Q And whom did you recognize?

3 A Number six.

4 Q And who was that?

5 A Nathaniel Jackson.

6 Q Okay. And did you, and was he one of the people you
7 served that night?

8 A Yes.

9 Q And did you sign that form?

10 A Yes.

11 MR. BAILEY: Can I have this marked as
12 State's Exhibit 403?

13 (Whereupon, State's Exhibit Number 403 was marked for
14 identification.)

15 Q I'm gonna show you what's been marked for
16 identification as State's Exhibit 403. Do you recognize
17 that?

18 A Yes.

19 Q And what is that?

20 A That's the woman I waited on that evening.

21 Q Okay. And did you initial that?

22 A Yes.

23 Q When did you do that?

1 A The 19th of December.

2 Q Okay. Now, that woman that you waited on that
3 night, do you see her here in the courtroom today?

4 A Yes.

5 Q Can you point her out?

6 A Yeah. She's sitting over there.

7 Q Over here?

8 A Uh-huh.

9 MR. BAILEY: May the record reflect that
10 the witness identified the defendant?

11 Q (By Mr. Bailey) Does she look any different today
12 from when you saw her?

13 THE COURT: The record will so reflect.

14 MR. BAILEY: Thanks, Your Honor.

15 A Different hair color.

16 Q Different hair color? Okay.

17 MR. BAILEY: Okay. I'm done with my
18 questions. Defense counsel are gonna be able to ask you some
19 questions.

20 THE WITNESS: Okay.

21 CROSS EXAMINATION

22 BY MR. INGRAM:

23 Q Good morning. How are you?

1 A Good morning.

2 Q The Red Lobster is a fairly busy restaurant, is it
3 not?

4 A Yes.

5 Q And these two present themselves at the Red Lobster
6 shortly before 6 p.m?

7 A Yes.

8 Q And that would be smack dab in the middle of the
9 dinner hour?

10 A Yes.

11 Q And that would be the busiest time of day at the Red
12 Lobster?

13 A Yeah.

14 Q Do they ask for a table in a dark corner secluded
15 from the rest of the customers?

16 A No.

17 Q They sit there openly in front of everyone?

18 A Yes.

19 MR. INGRAM: No further questions.

20 THE COURT: Any redirect?

21 MR. BAILEY: No. No redirect.

22 THE COURT: Ma'am, thank you very much.

23 You're excused.

1 THE WITNESS: Thank you.

2 THE COURT: Next witness.

3 MR. BAILEY: State calls Paula Carson.

4 **WHEREUPON,**

5 **PAULA CARSON,**

6 having been first duly sworn, according to law, was examined
7 and testified as follows:

8 **DIRECT EXAMINATION**

9 **BY MR. BAILEY:**

10 Q Morning, Miss Carson.

11 A Morning.

12 Q Do you want to tell the Court and jury your full
13 name?

14 A Paula Jo Carson.

15 Q And where do you live?

16 A I live in McDonald.

17 Q I'm sorry?

18 A I live in McDonald.

19 Q McDonald. Okay. And where do you work?

20 A I work at Trumbull County 9-1-1.

21 Q And your position there?

22 A I'm a dispatcher.

23 Q And how long have you been so employed?

1 A I have been there since August of '98.

2 Q Okay. Now, what do you do there? What are your
3 duties and responsibilities at the 9-1-1 Center?

4 A We take 9-1-1 calls. We take seven-digit calls,
5 which is like non-emergency calls, and we handle, as far as
6 the police departments, when they go on traffic stops, when
7 they go on calls, anything they call out, we also handle that
8 at the same time.

9 Q Okay. And can you tell us what shift you typically
10 work at the 9-1-1 Center?

11 A I'm on midnight turns. I work --

12 Q And how long have you been doing that?

13 A I've been on steady midnight turns for probably
14 close to a year now. But before then, it was a float shift.

15 Q Okay. And midnight turn, what time does that
16 commence?

17 A It starts at 11 at night, 11 p.m., which is 2300
18 hours, we go by military time, until 7 a.m.

19 Q Okay. And did you work last night?

20 A Yes, I did.

21 Q Okay. And can you tell me when you're at the 9-1-1
22 Center, when calls come into your center, are those telephone
23 calls recorded?

1 A Everything is recorded. Radio traffic, 9-1-1 calls,
2 the seven-digit lines. Everything is recorded.

3 Q And are those phone calls and recordings kept as
4 part of doing business as the 9-1-1 Center?

5 A Correct. Everything is kept. Everything can be
6 taped. Everything's taped. You can get a copy of anything.

7 Q Okay. And are those tapes made at the time that the
8 calls come in?

9 A They're recorded at the time the calls come in.
10 When someone requests a tape, they go in and they make it,
11 the supervisor will make it for them, depending upon which
12 call, what traffic they want. Everything's made.

13 Q Okay. Now, I want to direct your attention back I
14 believe it's about 17 months ago, to December 11th and
15 beginning of December 12th of 2001. Did you work that
16 evening?

17 A Yes, I did.

18 Q And what time did you start?

19 A I started at 11 that night, 2300 hours.

20 Q Okay. And did you have occasion to receive a 9-1-1
21 call from Fonderlac Drive?

22 A Yes, I did.

23 Q And what happened?

1 A I answered a 9-1-1 call and there was a female
2 screaming. And it was hard to get information from her at
3 first because she was so hysterical. I wasn't sure whether
4 it was a squad call. I wasn't sure whether it was a suicide.
5 When someone's screaming like that, it's kind of hard to
6 understand them. You try to get as much information as you
7 can from them for the officers. As far as medical, whether
8 they need to go out and get a squad out there started. She
9 was pretty much upset. I pretty much got the address, I got
10 her name out of her. And when the officers got there, then
11 they took over as far as the rest of the information from
12 her.

13 Q Okay. Now, when the call comes up, when you first
14 get the call, you have like a computer screen?

15 A Yes. It's called a KML. When you get a call from a
16 home, from a residence, it'll bring up the address, the phone
17 number, who the phone is registered to, which township it
18 comes back to.

19 Q Okay. So when the phone call comes in, the address
20 is translated from the phone number?

21 A Correct.

22 Q And is there a written log or a computerized log
23 that's also kept in connection with those phone calls?

1 A With the phone calls and the calls, there's, it's
2 written. It's called a CAD sheet. It's a computer-generated
3 sheet.

4 Q What's CAD stand for?

5 A It's computer automated I think it's data. It has
6 to do with everything that you put into the call, anything
7 you take, as far as the address, the residence, everything on
8 the 9-1-1 screen will pop up on the CAD sheet. Any
9 information you put on as far as units on the call, any
10 information that you're given that's put into narrative comes
11 up on the CAD sheet.

12 Q I'm gonna show you what's been marked for
13 identification as State's Exhibit 1-A. It's a folder
14 containing some sheets. And now I'm gonna ask you if you can
15 identify that.

16 A This is the, the CAD sheet from that night when I
17 took the call. It gives from the beginning time until the
18 time the call was actually cleared. It gives the units that
19 was on it, everything as far as what happened that was
20 reported to us is on here.

21 Q Okay. Now, what time did that call come in exactly?

22 A This come in exactly one minute after midnight.

23 Q One minute after midnight?

1 A Correct.

2 Q Okay. And to what phone number was it registered
3 to?

4 A It was registered to -- you want the actual phone
5 number or the address?

6 Q Yeah. The phone number.

7 A It's 609-7812.

8 Q Is there, is there a three digit?

9 A 330 is the area code.

10 Q Okay. Our area code?

11 A Area code 330-609-7812.

12 Q And to whom is that, does the caller's name come up
13 on the screen?

14 A Correct. It comes back to a Donna M. Roberts.

15 Q And an address?

16 A It comes back to 254 Fonderlac Drive, Southeast, in
17 Howland.

18 Q Here in Trumbull County?

19 A Correct.

20 Q Okay. And --

21 MR. INGRAM: We'll stipulate that's the
22 tape.

23 Q (By Mr. Bailey) I'm just gonna show you State's

1 Exhibit 1. Have you seen this before?

2 A Yes. It's the tape of the call, of the call that I
3 had took.

4 Q Okay. And have you listened to it before?

5 A Yes, I have.

6 Q Okay. And is it a true and accurate representation
7 of the call that you received that night?

8 A Yes, it is.

9 Q And is that your initial on the tape?

10 A Yes.

11 MR. BAILEY: I'm gonna ask permission to
12 play this tape.

13 THE COURT: I guess I shouldn't nod my
14 head. It's yes.

15 MR. BAILEY: Okay. Thank you, Your Honor.

16 Oh, the Court wanted me to remind it of something
17 yesterday.

18 MR. BECKER: Yeah. We'll do that on the
19 break.

20 (Whereupon, State's Exhibit Number 1 was played for the jury
21 commencing at 8:37 a.m. and concluding at 8:41 a.m.)

22 Q (By Mr. Bailey) Now did that truly, is that the
23 call that you received?

1 A Yes.

2 Q Now, as a result of that call, what did you
3 dispatch?

4 A I dispatched that there was the problem, it was hard
5 to understand her, but that there's a problem with her
6 husband. I didn't know whether it was, we didn't know as far
7 as medical, whether it was suicide, whether, heart attack,
8 whether, we didn't know exactly what was wrong with him. She
9 was very hysterical, hard to understand.

10 Q So who did you dispatch then?

11 A We dispatched Howland Police Department and we also
12 dispatched the fire department for Howland.

13 Q Okay. The fire department would be the paramedics?

14 A Correct.

15 MR. BAILEY: Okay. I'm done with my
16 questions. Defense counsel will have an opportunity to
17 address you.

18 CROSS EXAMINATION

19 BY MR. INGRAM:

20 Q Morning, Miss Carson. How are you? That CAD sheet,
21 what is that, Exhibit 1-A, State's Exhibit 1-A, does that
22 indicate that the call we just listened to came in at 12:01?

23 A It indicates that it come at 1 after and 20 seconds.

1 Q I'm sorry?

2 A It come one after and 20 seconds, the exact time
3 that it was received --

4 Q Okay.

5 A -- was one minute after and 20 seconds.

6 Q I'm sorry. I'm confused. What time did the call
7 come in?

8 A It come in one minute after midnight and 20 seconds.

9 Q One minute and 20 seconds after midnight?

10 A Correct.

11 Q Is that -- 12:01 is close enough for my purposes.

12 Is 12:01 about right?

13 A Correct.

14 Q Does it also indicate that the Howland Police
15 Department was en route at about 12:03?

16 A The police department was en route at, correct,
17 three minutes after.

18 Q Does it indicate that the police department arrived
19 at the Fonderlac residence at 12:05?

20 A Correct.

21 MR. INGRAM: No further questions.

22 THE COURT: Any redirect?

23 MR. BAILEY: No redirect.

1 THE COURT: Thank you, ma'am. You're
2 excused.

3 MR. BAILEY: Bridget Paul.

4 WHEREUPON,

5 BRIDGET PAUL,

6 having been first duly sworn, according to law, was examined
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BAILEY:

10 Q Good morning.

11 A Morning.

12 Q Do you want to tell the Court and the jury your full
13 name?

14 A Bridget Paul.

15 Q Okay. And let me just move this up a little bit
16 closer maybe so you don't have to lean forward. Okay. And
17 where do you live, ma'am?

18 A 203 Avalon Drive.

19 Q Okay. And what township is that located in?

20 A Trumbull. Trumbull County.

21 Q Trumbull County, but I mean are you in Howland?

22 A Howland. Howland.

23 Q Okay. And where is that in relation to Fonderlac

1 Drive?

2 A It's a street over.

3 Q And do you work anywhere outside the home?

4 A No.

5 Q Okay. Now, did you become familiar with a woman by
6 the name of Donna Roberts?

7 A I never met her personally, but she's in the
8 neighborhood and you kind of get to know the neighborhood
9 people. So I did know her through passing.

10 Q Okay. And as part of somebody in the neighborhood,
11 did you become familiar with the kind of car that Donna
12 Roberts drove?

13 A Yes, I did.

14 Q Okay. And what kind of car, can you describe the
15 type of vehicle that she drove? Let me go back to about 17
16 months ago or so, okay, which would be in December, November
17 and December of 2001. I think that's about 17 months ago.
18 Can you describe the vehicle?

19 A Burgundy. A very nice car. It was kept clean. I'm
20 not good at brands, but to see it, I would recognize it.

21 Q Okay. Now, I'm gonna hand you what's been marked
22 for identification as State's Exhibits 146, 147 and 148 and
23 149, okay, four photographs, have you seen those before?

1 A Yes.

2 Q Okay. And do you recognize the vehicle that's in
3 those photographs?

4 A Yes.

5 Q Okay. What is that vehicle?

6 A Donna --

7 Q Donna Roberts?

8 A -- Roberts' car, yes.

9 Q Okay. And those pictures show different angles of
10 that vehicle?

11 A Yes, it does.

12 Q Okay. And whereabouts would you see her in the
13 neighborhood?

14 A We live on a corner and I would see her. She would
15 always pause, a long pause at our stop sign and kind of sit
16 there for a few moments. And we kind of observed her that
17 way. And whenever she would go through the Avalon Estates,
18 we would kind of watch her.

19 Q Oh, okay. Is there a Giant Eagle nearby?

20 A Yes, there is.

21 Q And did you ever see her there?

22 A One time I saw her in the store, but most of the
23 time it was in the allotment or maybe through town I might

1 see her once in a while driving.

2 Q Okay. And is there anything particular about that
3 vehicle that you see in the pictures that you recognize?

4 A What comes to my attention last time I saw the car
5 was the back bumper because I was behind her for a long time
6 and just how the reflectors were on both sides of the
7 driver's, the license plate on both sides of the bumper.

8 Q And one of those photos --

9 A It --

10 Q What's the number on the back of the photo that
11 shows that?

12 A 14 --

13 Q Is that 148?

14 A Yes.

15 Q State's Exhibit 148. Okay.

16 Now I'm gonna direct your attention to about 17
17 months ago, to December 11th of 2001. Did you see that car
18 that evening?

19 A Yes, I did.

20 Q And why do you remember that date in particular?

21 A I was returning some tapes to Giant Eagle about 9:30
22 that night.

23 Q Okay. Tapes, like VHS tapes?

1 A I believe it was that.

2 Q Movies?

3 A Movies, yes, for the kids.

4 Q Okay. And did you get some information the next day
5 that made you remember that evening in particular?

6 A Yes.

7 Q Okay. What, what did you find out about?

8 A One of my neighbors called and --

9 Q As a result -- well, let me phrase it this way.

10 THE COURT: Just a minute. Is there an
11 objection?

12 MR. INGRAM: Not yet.

13 Q (By Mr. Bailey) Did you learn of any occurrence that
14 had occurred in Howland?

15 A No, not at this time, until I got a phone call from
16 my neighbor and, a friend of mine, and she said that there
17 was a homicide that was here in Avalon and --

18 Q Okay. And so you remember that night?

19 A Yes.

20 Q Okay. Now as a result of that, did you then contact
21 the police department?

22 A I did eventually. I --

23 Q Okay. And when did you remember first seeing that

1 car on Tuesday, December 11th? About what time?

2 A It was about, between 9:30 and 10.

3 Q In the evening?

4 A Yes.

5 Q And where did you see it?

6 A On old 82.

7 Q And where is that in relation to your house?

8 A About a block north of where I live. And I was
9 going west towards Giant Eagle.

10 Q Okay. And which direction was this car that, Donna
11 Roberts' car going?

12 A Same way I was going, west, towards Warren.

13 Q Towards Warren? Okay. It was on old 82?

14 A Yes.

15 Q How many lanes are on that road?

16 A It's two lanes until it gets to Howland Corners and
17 then it turns into four lanes.

18 Q Okay. And Howland Corners, that's what, 46?

19 A Yes, 46 and old 82.

20 Q Okay. And 46 takes you down, if you go south,
21 towards Eastwood Mall?

22 A Yes, it would.

23 Q Okay. And that's the back way into the mall?

1 A Yes.

2 Q What's right there at the corner of 46 and 82?

3 A You'd have two gas stations, a doctor's office and
4 Andrews Shop. And more so, behind the gas station is Giant
5 Eagle.

6 Q Okay. Like a plaza; right?

7 A A plaza, yes.

8 Q Okay. How do you get into the Giant Eagle parking
9 lot?

10 A There's a few ways you can get in, but it's on your
11 left as you go down old 82. And I would always cut in before
12 the light that was right in front of Giant Eagle and the
13 Howland School.

14 Q Okay. Now, was there anything, anything
15 characteristic about Donna Roberts, the driver, that would
16 catch your attention?

17 A Whenever she would drive her car, she would always
18 have her window down and she would always be smoking her
19 cigarette. And just the mannerism that she would hold her
20 cigarette to the side.

21 Q How did she do that?

22 A Just by flicking her cigarette.

23 Q Okay. Any particular style that you refer to it as?

1 A Well, as I said before, the kids told me it's like a
2 Hollywood style.

3 Q Okay. So you followed the, about how far did you
4 follow her car?

5 A Pretty much, I would say about a mile.

6 Q Okay. And you were directly behind the car?

7 A Yes, I was. All the way.

8 Q And did you have to stop at the light at 46?

9 A I paused there. We were going pretty slow. I
10 believe by the time I got to the light, it turned and we went
11 through. But I don't think it was an actual red light. It
12 was the light before we actually stopped off, stopped
13 completely, which would be Howland-Wilson.

14 Q Okay. And then you proceeded down to 46?

15 A Yes, I did.

16 Q Do you know what the speed limit is out there?

17 A I think it's 40 miles.

18 Q And were you doing the speed limit?

19 A No. We were going much slower.

20 Q Was there any traffic in front of her?

21 A No. We were the only --

22 Q And did that appear unusual to you?

23 A It was because normally when someone is on the road,

1 they'll kind of scoot along if there's no traffic and she was
2 going pretty slow, but I just stayed behind her. I wanted, I
3 just stayed behind her.

4 Q Okay. You were able to observe her license plate?

5 A Yes, I did.

6 Q And did it sort of make you agitated?

7 A It did, but sometimes I just wanted to see what she
8 was up to.

9 Q Okay. Once you got to Howland Corners, what
10 happened then?

11 A We got to Howland Corners, we went through the light
12 at 46 and we continued to the next light, which was right in
13 front of Giant Eagle. She started to stop, and that's when I
14 veered off into the store parking lot and I continued going
15 up to the tape, to drop the tape off then.

16 Q How, and what was she doing while you were doing
17 this?

18 A She was sitting at the light for a pretty long time
19 and I believe it turned green and I kept looking over and I
20 saw her toss her cigarette at the time and I was kind of --
21 I'm against smoking for one thing. And someone littering, it
22 just kind of got me upset that she would do that. So I went
23 on and kind of kept looking over because it was taking her so

1 long to move through the lights.

2 Q Okay. And do you get to return your videotapes?

3 A Yes, I did.

4 Q And did you look back at the defendant in her
5 vehicle?

6 A I did. I dropped the tape off and then I glanced
7 back and she seemed like she was moving forward. But when I
8 moved, when I circled around, the car was gone. And I
9 thought that was kind of unusual because --

10 MR. INGRAM: Objection.

11 THE COURT: Yeah. Objection sustained as
12 to what the witness thought.

13 Q (By Mr. Bailey) Okay. Well, what time was this
14 approximately?

15 A Between 9:30 and 10.

16 MR. BAILEY: Thank you very much. Defense
17 counsel will have an opportunity to ask you some questions.

18 THE COURT: Cross?

19 **CROSS EXAMINATION**

20 **BY MR. INGRAM:**

21 Q Good morning, ma'am. How are you?

22 A I'm sorry?

23 Q I said good morning. How are you?

1 A I'm fine.

2 Q You're a bit of a curious person, aren't you?

3 A I am?

4 Q Yeah. You chose to follow this car for awhile when
5 you could have passed it; correct?

6 A Yes.

7 Q And you are against smoking?

8 A Well --

9 Q Isn't that what I heard you tell Mr. Bailey?

10 A Yes. I mean anyone who litters. I just, you know,
11 if you're gonna smoke, you can smoke, but just don't throw
12 your butts. That's all.

13 Q Okay. And so you're also against littering? Is
14 that an accurate statement?

15 A Yes.

16 Q Okay. That car and those exhibits, 146-A through
17 what, D, do you know Robert Fingerhut?

18 A No. I never met him, never.

19 Q Did you ever see --

20 A I saw him from a distance, but I couldn't --

21 Q Did you ever see a male drive that car?

22 A No.

23 Q Did you ever see Donna drive a car that's similar,

1 probably the same make, but silver in color rather than red?

2 A No. It was always the burgundy.

3 Q Where is this Giant Eagle? I'm not familiar with
4 Warren. Where is the Giant Eagle?

5 A On old 82.

6 Q How close to Howland-Wilson Road?

7 A Howland-Wilson Road? Maybe a half a mile.

8 Q It's a fact, isn't it, that you didn't realize that
9 this was Donna's car until you got to Howland-Wilson Road?

10 A Actually, before I even got to Howland-Wilson. We
11 started approaching it and there were more lights in that
12 area and I noticed by her arm going out.

13 Q Okay. I'm gonna hand you a document and ask you to
14 read that page right there to yourself.

15 A (Witness complies.)

16 Q Isn't it a fact that you previously testified under
17 oath that you didn't realize it was Donna's car until you got
18 to Howland-Wilson Road?

19 A From about here to as we were approaching. So by
20 the time, yes, I knew that when we made the stop at
21 Howland-Wilson, yes.

22 Q Did you previously -- my question right now is did
23 you previously testify under oath that you did not realize it

1 was Donna's --

2 A I guess --

3 Q -- car until you got to Howland-Wilson Road?

4 A I guess I did.

5 Q Is that a hard question to understand?

6 A No.

7 Q And is that what the written word says?

8 A As I -- yes.

9 Q And as a matter of fact, Donna always drove slow,
10 didn't she?

11 A She did.

12 MR. INGRAM: No further questions.

13 THE COURT: Redirect?

14 MR. BAILEY: No further questions.

15 THE COURT: Ma'am, thank you so much.

16 You're excused.

17 THE WITNESS: Thank you.

18 MR. BECKER: Your Honor, State would call
19 James Daniels.

20 THE COURT: Okay. Please proceed.

21 * * *

22

23

1 WHEREUPON,

2 JAMES DANIELS,

3 having been first duly affirmed, according to law, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Sir, would you introduce yourself to this jury,
8 please?

9 A My name is James Daniels.

10 Q And Mr. Daniels, where do you live at?

11 A 905 Lanterman Avenue.

12 Q And how long have you lived there?

13 A Oh, I lived there about four or five years.

14 Q Do you work someplace?

15 A Yes. I work at the Greyhound bus terminal.

16 Q And where is that Greyhound bus terminal located at?

17 A Youngstown, Ohio.

18 Q Do you happen to know what the address is there?

19 A 340 Federal Plaza West.

20 Q Okay. And Mr. Daniels, how long have you worked at
21 the Greyhound bus terminal in Youngstown?

22 A Oh, about 18 years.

23 Q What do you do there at the Greyhound bus terminal?

1 A Terminal manager.

2 Q And how long have you been the terminal manager?

3 A The terminal manager, well, up until now, about six
4 years now.

5 Q And can you tell this jury what it is that the
6 terminal manager does at the Greyhound bus station in
7 Youngstown, Ohio?

8 A One of the main things that is done is make sure
9 that the scheduling is done right and the tickets are, all
10 the employees are doing their job right, the loading of the
11 buses and make sure the customers are satisfied.

12 Q Okay. You know what, before we go any further, I
13 see a couple of jurors leaning back. You might want to get
14 this a little closer to you and maybe move the seat up so you
15 can get into the microphone a little better.

16 A (Witness complies.)

17 Q Thank you, Mr. Daniels.

18 A Okay.

19 Q All right. Now Mr. Daniels, were you the terminal
20 manager of the Greyhound bus station in Youngstown in
21 December of 2001?

22 A Yes.

23 Q Okay. Now, do you know if there are any other

1 businesses located in that terminal?

2 A Plaza Donuts, WRTA.

3 Q And what is the WRTA?

4 A WRTA is the local transportation service for
5 Youngstown.

6 Q Now, I want to take you back, Mr. Daniels, to
7 December of 2001. Who ran the Greyhound bus terminals? Who
8 did you report to in December of 2001?

9 A Mr. Robert Fingerhut.

10 Q And how long had Mr. Robert Fingerhut been your boss
11 in December of 2001?

12 A In December?

13 Q In that year, in that month of December of 2001, how
14 long had you been working for Mr. Fingerhut prior to that?

15 A He got there about in '88 so about two years I
16 think.

17 Q '88 or '98?

18 A '98. I'm sorry.

19 Q Okay. So about two, almost three years?

20 A Yes.

21 Q And do you know how he came to acquire the Greyhound
22 bus terminal or how he came to run the station?

23 A There was an opening. The predecessor resigned from

1 the position so they had a, they were looking for somebody to
2 occupy that same position.

3 Q Okay. And was your relationship with Mr. Fingerhut
4 on just a professional level, a working level?

5 A Well, we came, we talked a lot. You know. Just
6 friendly.

7 Q A lot of down time between when buses would come
8 that you would have occasion to speak to him?

9 A Yes.

10 Q Okay. And how would you describe your relationship
11 with Mr. Fingerhut? Was it a good relationship, a bad
12 relationship?

13 A It was a good relationship.

14 Q All right. Now did you ever know Mr. Fingerhut to
15 have a significant other in his life, either a wife or a
16 girlfriend or someone that he held out as his wife?

17 A The only one I know is Miss Roberts. That's the
18 only one I know of.

19 Q Do you know what Miss Roberts' first name was?

20 A Donna.

21 Q Now, Mr. Fingerhut -- well, first of all, let me go
22 back and ask you. What shift did you generally work when you
23 worked for Mr. Fingerhut?

1 A Morning shift.

2 Q Okay.

3 A From 7 to 3:30.

4 Q And when would Mr. Fingerhut arrive at the Greyhound
5 bus station?

6 A Most of the time, he worked in the afternoons. He'd
7 usually be there at around 3 or a little bit before 3.

8 Q And was there a reason that you were there in the
9 morning and he sort of came in in the afternoon?

10 A No particular reason. Most of the time he wanted to
11 be in Warren in the morning sometimes but, you know, that's
12 the shift I always had, the morning shift.

13 Q Now, what was the significance of him having to be
14 in Warren? What was in Warren?

15 A Well, he was also the owner of Warren bus station
16 also.

17 Q So he had actually two different locations for this
18 Greyhound bus terminal; is that right?

19 A Right. Correct.

20 Q Now, in December of 2001 -- well, let me strike
21 that.

22 What kind of work did Robert Fingerhut do when he
23 was at the Youngstown bus terminal? What was he in charge of

1 doing?

2 A His main, when he was at work, the main thing, he
3 sold tickets, answered the phone, gave information. Sometime
4 he would do some paperwork every now and then.

5 Q Okay. Now, Mr. Daniels, I've never been to the
6 Greyhound bus terminal in Youngstown. Do you think you could
7 describe the layout of where the terminal is in that building
8 and maybe, is it just a large room or there's an office or
9 what is in there?

10 A The terminal has a large lobby area which is located
11 at the rear of the building. The ticket counter and the WRTA
12 is located at the right, if you're coming in, the right rear
13 side. The WRTA is on the far right and Greyhound is on the
14 left. We share the same ticket window or information window.

15 Q All right. Would you describe that as larger or
16 smaller than this room, this courtroom?

17 A It's larger.

18 Q Much larger?

19 A Yes.

20 Q All right. Now, I assume that station can get busy
21 when buses come in?

22 A Yes.

23 Q In addition to the Greyhound bus terminal there,

1 when, how often would the WRTA buses come in?

2 A They come in at the top of the hour and the bottom
3 of the hour.

4 Q So every half hour, there's a WRTA bus. And that is
5 the local Warren, I'm sorry, the Western Reserve Transit
6 Authority buses?

7 A Yes.

8 Q So there would generally be quite a bit of people
9 milling about there?

10 A Correct.

11 Q Now, at one point, I believe there was a restaurant
12 located in the terminal; is that correct?

13 A That is correct.

14 Q Do you recall what the name of that restaurant was?

15 A Just the Ticket.

16 Q And do you recall who ran that restaurant?

17 A Mr. Fingerhut and Donna Roberts.

18 Q Was Miss Roberts there more often when the
19 restaurant was open or was she there about the same amount of
20 time or was she there less time when the restaurant was open?

21 A When the restaurant was open, she was there mostly
22 all the time.

23 Q When the restaurant was open?

1 A Yes.

2 Q Do you know what she did at the restaurant?

3 A Well, she was always over there doing -- I'm not
4 always over there so.

5 Q You're busy doing your thing with the Greyhound bus
6 terminal?

7 A Yeah. I know something was going on over there.

8 Q What do you mean, you know something was going on?

9 A Well, you know, they were waiting on customers and
10 so on and so forth.

11 Q Right. Okay. So they were busy too?

12 A Yeah.

13 Q At some point, did that Greyhound, or I'm sorry, did
14 that restaurant have to close or did Mr. Fingerhut close that
15 restaurant?

16 A Yes. A little bit before that, they had closed the
17 restaurant. I don't remember the exact reason why.

18 Q Little bit before December of 2001?

19 A Yeah. I don't remember how long. About, it was a
20 little while before that. I can't remember when it was.

21 Q Could have been six months, could have been maybe
22 less than a year, more than a year?

23 A About six months, yes, sir.

1 Q So maybe summer, mid-summer, early summer of 2001
2 the restaurant closed?

3 A Something like that.

4 Q Now when the restaurant closed, did you see Miss
5 Roberts around as much?

6 A No.

7 Q How often would you see Miss Roberts at the
8 Greyhound bus terminal?

9 A You would, very seldom. She'd come every now and
10 then.

11 Q Okay. Would she call the Greyhound bus terminal
12 after the restaurant closed?

13 A Yes, sometime, looking for Mr. Fingerhut.

14 Q How often would she call the Greyhound bus terminal
15 looking for Mr. Fingerhut?

16 A Maybe, oh, if I'm there, about maybe about two or
17 three times. It depends. You know.

18 Q Now, the Donna Roberts that you're familiar with, do
19 you see her in the courtroom today?

20 A Yes.

21 Q Could you please point to her?

22 A She is over there (indicating.)

23 MR. BECKER: All right. I'm gonna ask the

1 Court to allow the record to reflect that he has, in fact,
2 identified the defendant.

3 THE COURT: The record will reflect.

4 MR. BECKER: Thank you, Your Honor.

5 Q (By Mr. Becker) Now, when you were working at the
6 Greyhound bus terminal, who generally paid the bills and sent
7 out the payroll and did the paperwork?

8 A Basically Miss Roberts and Mr. Fingerhut I believe.
9 At one time. And then they turned it over to a payroll
10 agency.

11 Q All right. So essentially they just turned it over
12 to some agency that would make the payroll?

13 A Right.

14 Q Now, I want to direct your attention to some
15 security there. Was there some cameras in that business,
16 Greyhound bus terminal?

17 A Yes.

18 Q Do you know how many there were?

19 A Nine.

20 Q And do you know where they were focused at, what
21 types of, where they were focused at in the actual terminal
22 itself?

23 A They had one camera focused on the parking lot, one

1 camera focused on the, where the Greyhound buses would come
2 in, the other camera would be focused in the baggage area,
3 the other camera was located near the rest rooms, the other
4 one was, one was focused down the hallway to the front
5 entrance. Let's see here. There was one focused towards the
6 donut shop at the entrance.

7 Q Now were those cameras that you could get access to
8 as an employee of Greyhound, you could get the tapes out?

9 A No.

10 Q Who had the tapes to those?

11 A The security.

12 Q The security people?

13 A And Mr. Diaz from WRTA.

14 Q Miguel Diaz?

15 A Yes.

16 Q And did Miguel Diaz have some people that worked
17 security for him?

18 A Yes.

19 Q And were those officers of the Mahoning County
20 Sheriff's Department generally?

21 A That is correct.

22 Q Was one of those individuals a fellow by of name of
23 Joe or Jose Sanchez?

1 A That is correct.

2 Q All right. Now, I want to direct your attention
3 back to December of 2001. In December of 2001, did you know
4 what kind of vehicle Mr. Fingerhut drove?

5 A A grey Chrysler 3000.

6 Q And do you know what type of vehicle Mrs. Roberts
7 drove?

8 A It was a maroon, but same car, Chrysler 3000.

9 Q And specifically on December 11, 2001, during your
10 work shift, I'm assuming you'd recall that Tuesday?

11 A Yes.

12 Q You showed up at your regular time at work?

13 A Correct.

14 Q You left at your general time of work, about 3,
15 3:30?

16 A Yes.

17 Q I think you just said?

18 A Yes.

19 Q Did you receive any phone calls from Donna Roberts
20 that day?

21 A Yes. About three of them.

22 Q And do you know what the nature of her calls were?
23 What did she want?

1 A She wanted to know if Robert was there and he
2 hadn't, had he got there yet.

3 Q Was there anything unusual about those calls that
4 struck you as odd?

5 A Because it was, it was just frequent. You know.
6 That's the only thing. It was frequent. Wanted to know has
7 he got there yet or something.

8 Q Were those calls in the morning or afternoon?

9 A It was around 1:30, 2:00.

10 Q And you received at least three phone calls from
11 her?

12 A Yeah.

13 Q Can you describe the tone of her voice?

14 A Like she really wanted to, you know, wanted to see
15 him.

16 Q To speak to him you mean?

17 A Speak to him, yeah.

18 Q Now, at some point, you left at 3:30 at your regular
19 time on December 11th; is that correct?

20 A Yes.

21 Q Did you say good-bye or did you leave any
22 instructions with Mr. Fingerhut?

23 A I only just said the same thing as I'd usually say

1 to him, what was going on that day, and he was always telling
2 me jokingly, "Jimmy D, don't leave me here to rot."

3 Q Okay.

4 A That's the last thing he told me.

5 Q And he didn't mean that literally? It was sort of a
6 joke you're saying?

7 A Yes. He always told me that.

8 Q He always told you that?

9 A Yeah.

10 Q Okay. And would that have been the last time you
11 saw Mr. Fingerhut alive?

12 A Yes.

13 Q Now, do you recall coming in to work -- well, strike
14 that.

15 Do you recall what he was wearing when you left work
16 that day?

17 A Some sort of baseball jersey.

18 Q Was that unusual for him?

19 A He wore it all the time, all kinds of different
20 jerseys and things.

21 Q And when you left the office that day, did you find
22 out anything the next morning when you came to work December
23 12th or did you hear anything that had happened to

1 Mr. Fingerhut?

2 A When I came in, the deputies pulled me over and
3 said, "There's something going on with Mr. Fingerhut."

4 He wouldn't tell me exactly what it was. They said
5 they think he got killed or something.

6 Q Now, directing your attention to that next day,
7 which was Wednesday, December 12th.

8 A Right.

9 Q This would have been the first time you walked into
10 the terminal that you were advised by someone that
11 Mr. Fingerhut had been killed?

12 A Correct.

13 Q Did you speak to Donna Roberts on December 12th?

14 A Yes.

15 Q What did you speak to Donna Roberts about?

16 A Concerning the payroll.

17 Q And why was that important to speak to her on that
18 particular day, that Wednesday?

19 A That was, it was talking about how we're gonna get
20 paid. We just wanted to know how we were gonna, the staff
21 was gonna get paid.

22 Q Now that Mr. Fingerhut had passed on?

23 A Yes.

1 Q Did she come into the station or was this a
2 telephone call?

3 A This was a telephone call.

4 Q And did she say anything about Mr. Fingerhut to you?

5 A Yes.

6 Q What did she tell you?

7 A She said that Robert was gone.

8 Q And did she cry?

9 A Yes.

10 Q Did it sound to you anything unusual about her
11 crying?

12 MR. INGRAM: Objection.

13 MR. JUHASZ: Objection.

14 THE COURT: Yes. What's your objection?

15 MR. INGRAM: Calls for absolute
16 speculation on the part of the witness.

17 THE COURT: That's what I thought. Yeah.
18 I'd sustain the objection.

19 MR. BECKER: All right.

20 Q (By Mr. Becker) When you went -- well, let me ask
21 you this. Did you go to Mr. Fingerhut's funeral?

22 A Yes.

23 Q Did you see Miss Roberts there?

1 A Yes.

2 Q Can you describe how she acted at the funeral?

3 A It wasn't, it was, it was, it was not usual. It
4 just, I hadn't never seen anyone act like that at a funeral.

5 Q You had been to funerals before this; correct?

6 A Yes.

7 Q How was she acting?

8 A Well, a little odd to me. To me. I know she was
9 sad, but it was just not of the norm to me.

10 Q Did you make a comment to your wife about her
11 behavior?

12 A Yes.

13 Q And what was that comment?

14 A "This don't seem right to me."

15 Q Now, did you notice a change in the relationship
16 between Donna Roberts and Robert Fingerhut after the closure
17 of that restaurant called Just the Ticket?

18 A Well, like said, I don't usually see her that much
19 but, you know, they would usually talk sometime, you know, on
20 the phone.

21 Q Okay. You didn't notice anything unusual, though,
22 after the closing in either one of their behavior?

23 A Well, Miss Roberts was a little different.

1 Q Different in what sense?

2 A Well, she --

3 MR. INGRAM: I object to the question.

4 May we approach?

5 MR. BECKER: I'll withdraw it. I'll
6 withdraw it.

7 Thank you very much, Mr. Daniels. I believe these
8 gentlemen will have some questions for you.

9 CROSS EXAMINATION

10 BY MR. INGRAM:

11 Q Hi, Mr. Daniels. How are you?

12 A Yes, sir.

13 Q Are you a trained psychologist by any chance?

14 A Trained psychologist?

15 Q Uh-huh.

16 A No, I'm not, sir.

17 Q Do you have any psychological training at all?

18 A No.

19 Q Do you still work for Greyhound?

20 A Yes.

21 Q So Greyhound did not go bankrupt after 9-11?

22 A No, they didn't.

23 Q Is there an owner/operator of the Youngstown

1 Greyhound terminal today?

2 A Correct.

3 Q Who is that?

4 A Deanna Baum.

5 Q Who?

6 A Deanna Baum.

7 Q So after Mr. Fingerhut passed away, the current
8 owner/operator purchased the business from Greyhound?

9 A Correct.

10 Q And as I recall your testimony, Mr. Fingerhut bought
11 or Donna and Mr. Fingerhut bought the rights to the Greyhound
12 terminal about three years before Mr. Fingerhut's death in
13 1998?

14 A Correct.

15 Q So it was not nine years before his death?

16 A No.

17 Q Did Donna work the restaurant Just the Ticket?

18 A Yes.

19 Q And would she come to work every day?

20 A I'd see her mostly every day at the restaurant.

21 Q And Mr. Fingerhut, while Donna was working the
22 restaurant, Mr. Fingerhut would work the bus section?

23 A Sometimes he'd be at the restaurant also. Most of

1 the time, I'd see him over -- he's back and forth.

2 Q And that restaurant closed on or about December 20th
3 of 1999? Does that sound about right?

4 A Yeah. Somewhere in that area, yes, sir.

5 Q And after that restaurant closed, there was no
6 longer the need for Donna to be at the Youngstown terminal as
7 often as she had been when the restaurant was open; am I
8 right?

9 A Correct.

10 Q Did I hear you say that it was not uncommon for
11 Donna to call Mr. Fingerhut two, three, four times a day?

12 A Sometimes. Yes.

13 Q Can we talk about cars for a second?

14 A All right.

15 Q There were two Chryslers; am I right?

16 A Yes.

17 Q And one was newer than the other one?

18 A Well --

19 Q Do you know that to be true or not?

20 A I don't know how new they were. They looked about
21 the same.

22 Q Did they trade cars off and on or would one
23 consistently drive one car and the other one consistently

1 drive the other car?

2 A As I can remember it, Mr. Fingerhut always drove the
3 gray car.

4 Q Now were you --

5 MR. INGRAM: May I have one second, Your
6 Honor?

7 Thank you.

8 Q (By Mr. Ingram) Were you at work -- you were at work
9 on December 11th?

10 A Right.

11 Q And your duty shift is from 7 in the morning until 3
12 in the afternoon and I believe you told Mr. Becker that you
13 left on the 11th at 3:30?

14 A Yes.

15 Q Mr. Fingerhut would have been, would have arrived
16 shortly before 3?

17 A Well, on that day, he arrived about 3:05 or
18 something like that.

19 Q And Frank Reynolds was also working that day?

20 A In the morning time. He wasn't there at that time.

21 Q He wasn't there at 3:05?

22 A No, he wasn't.

23 Q What time do you think Mr. Reynolds left?

1 A He's in and out of the place. He's not like what
2 you call a regular person that stays on. Only when the bus
3 came. So he was in and out. So the last time I remember
4 seeing him was like around 9 or so.

5 Q Nine in the morning?

6 A Yes.

7 Q There is an, is there a little office for the
8 Greyhound portion of the terminal?

9 A An office?

10 Q Uh-huh.

11 A Yeah. Well, it's separated, the Greyhound side and
12 WRTA side.

13 Q Well, Mr. Fingerhut would sell tickets and take
14 money?

15 A Correct.

16 Q Or you would sell tickets and take money?

17 A Right.

18 Q When you sold tickets and took money, were you in an
19 enclosed space that had a door that you would have to open so
20 the people could come in?

21 A The people, as customers you say?

22 Q No. Say if you were selling tickets and Robert had
23 to get to where you were, did you have to let him in?

1 A Yeah. Well, he had his own key.

2 Q Okay. You either had to have a key or somebody had
3 to let you in?

4 A Yes.

5 Q And describe this space for me. Would you call it
6 an office? Would you call it a ticket booth? What would you
7 call it?

8 A Well, it could be an office/ticket booth because you
9 have a desk and a certain section of that area is for ticket
10 transactions.

11 Q If you're standing outside of the office/ticket
12 booth, can you see inside of it?

13 A Yes.

14 Q Did you see Frank Reynolds and Robert Fingerhut in
15 that office/ticket booth anytime between 2:30 and 3:30 on
16 December 11th, 2001?

17 A No. He wasn't there. I can't remember.

18 Q He was not there?

19 A No. I don't remember seeing him.

20 Q Did you see Donna Roberts in this office/ticket
21 booth anytime between 2:30 and 3:30 on Tuesday, December
22 11th?

23 A No. She wasn't there.

1 Q She was not there. As a matter of fact, you told us
2 she's on the phone talking to you at about that time; right?

3 A Right.

4 MR. INGRAM: No further questions.

5 REDIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Mr. Daniels, could Mr. Reynolds have been there that
8 day in that office?

9 A He probably could.

10 Q With Mr. Fingerhut?

11 A It's possible. He's, like I said, he could be in
12 and out.

13 Q You just don't recall seeing him there?

14 A I don't recall seeing him there.

15 Q And do you recall whether or not Miss Roberts was in
16 that day if you recall?

17 A No. She wasn't, I can't remember her being there,
18 no.

19 Q But, again, she could have been, maybe while you
20 were doing something else?

21 A It's always a possibility.

22 Q People are in and out of there and sometimes you may
23 not know who's in that office?

1 A Correct.

2 Q So it's conceivable that on December 11th, without
3 you knowing, Mrs. Roberts --

4 MR. INGRAM: Objection to it's
5 conceivable. I have been very liberal as it is.

6 THE COURT: Just a minute.

7 MR. BECKER: Let me withdraw the question.

8 THE COURT: Rephrase your question.

9 MR. BECKER: Let me rephrase my question.

10 Q (By Mr. Becker) Are you aware of every person that
11 was in the office on December 11th, 2001?

12 A Not all the time because sometime I have to go
13 outside.

14 Q Okay. And -- well, strike that. Would
15 Mr. Reynolds, during the course of your employment, ever have
16 been in that office?

17 A Yes. He had his own key to get in and out.

18 Q Mr. Reynolds did?

19 A Uh-huh.

20 Q And would Miss Roberts sometimes be in the office of
21 the Greyhound bus terminal?

22 A Well, like I said, I never hardly ever see her,
23 but --

1 Q Did you ever see her in the office?

2 A Well, one time she came one day just to say hello.
3 That was like about two or three, about three or four days or
4 a week before. Just told me that she wanted to say hello to
5 me and left.

6 MR. BECKER: All right. I have nothing
7 further.

8 MR. INGRAM: I do.

9 RECROSS EXAMINATION

10 BY MR. INGRAM:

11 Q You were inside the Greyhound terminal or about
12 there at about 10:30, 11:30 in the morning?

13 A Yeah.

14 Q And in order to get in, you have to walk through two
15 glass doors and there would be a vestibule or a space
16 in-between?

17 A Yes.

18 Q Did you see Donna Roberts hugging and kissing a
19 black man in-between those two doors between 10:30 and 11:30
20 in the morning on December 11th, 2001?

21 A No, I didn't.

22 MR. INGRAM: No further questions.

23 THE COURT: Any redirect?

1 MR. BECKER: Yeah.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. BECKER:

4 Q How many sets of double doors are in the Greyhound
5 bus terminal?

6 A There's one section toward the street that has a
7 vestibule area. That's near where the restaurant was.
8 Another door is toward the rear of the terminal. That's
9 where most of the people come in and out, that area. There's
10 a vestibule area there also.

11 Q So how many total?

12 A Two. Two separate areas there.

13 Q Were part of your job duties in December of 2001 to
14 watch these areas?

15 A No. I just, it's just where I'm at.

16 Q Doing your paperwork and the things you had to do?

17 A Correct.

18 MR. BECKER: I have no further questions.

19 THE COURT: Anything further on cross?

20 MR. INGRAM: Nothing further.

21 MR. BECKER: Your Honor, may we approach?

22 THE COURT: Yes.

23 MR. BECKER: Oh, I'm sorry. Mr. Daniels

1 may be excused.

2 THE COURT: Thank you.

3 (Whereupon, a conference was held at the bench.)

4 THE COURT: We're gonna take a 15-minute
5 break, folks. Not to discuss anything or form any opinion
6 until you return.

7 (Whereupon, a recess was had commencing at 10:28 a.m. and
8 concluding at 10:45 a.m.)

9 THE COURT: You may call your next
10 witness.

11 MR. BAILEY: The State's gonna call Deputy
12 Jose Sanchez from Mahoning County Sheriff's Office.

13 * * *

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1 WHEREUPON,

2 JOSE SANCHEZ,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BAILEY:

7 Q Good morning.

8 A Good morning.

9 Q Deputy Sanchez, do you want to tell the Court and
10 jury your full name and your place of employment and
11 position?

12 A Yes, sir. Jose Sanchez, Mahoning County Sheriff's
13 Office.

14 Q Okay. And what's your position with the Sheriff's
15 Office?

16 A I'm a deputy sheriff.

17 Q And how long have you been so employed?

18 A Three years.

19 Q And your duties and responsibilities as a deputy?

20 A Provide security services for the jail, the
21 courthouse and odd jobs.

22 Q Okay. Now, is there a time when you took an extra
23 job as an employee of WRTA?

1 A Correct.

2 Q What is WRTA?

3 A That's the transportation services for Mahoning, as
4 well as Trumbull.

5 Q Okay. And when was that?

6 A That would be July of '99.

7 Q And that was a part-time job?

8 A Yes.

9 Q And where did you work as part of that part-time
10 employment?

11 A Federal station, downtown Youngstown, 340 Federal
12 Plaza West.

13 Q Okay. And what amount of time would you work and
14 what were your hours there approximately?

15 A About 32 hours a week.

16 Q Are you still working there?

17 A No.

18 Q Okay. When did you discontinue your employment?

19 A That would have been April of 2002.

20 Q Okay. Now, when you were employed in 1999, who was
21 the owner and operator of the Greyhound bus part of that
22 business?

23 A Robert Fingerhut.

1 Q And did you know Mr. Fingerhut?

2 A Yes.

3 Q And did you get along well with him?

4 A Yes, I did.

5 Q What kind of person was he?

6 A Pretty much a business person.

7 Q Okay. And how often would you work with him during
8 the week in 1999?

9 A He would come in in the evenings and work the
10 station as a ticket agent and I work a lot of evenings also
11 so.

12 Q Okay. Now, let's go back in time to about 17 months
13 ago to December 11th of 2001. Do you remember that
14 particular evening?

15 A Yes.

16 Q Okay. And did you work at the Greyhound bus
17 station, WRTA, that particular evening?

18 A Yes.

19 Q What time did you work there?

20 A I worked from 6:00 until 10.

21 Q And who was working for the Greyhound bus company
22 when you came to work?

23 A Mr. Fingerhut.

1 Q Was he by himself?

2 A Yes.

3 Q Do you know Donna Roberts?

4 A Yes.

5 Q And how would you describe their relationship, Donna
6 Roberts and Mr. Fingerhut?

7 A From what I understood, they were married.

8 Q Okay. Would you see her in Youngstown at times?

9 A Yes.

10 Q And did she work there very often?

11 A Yeah. She would come in sometimes and work with
12 him.

13 Q Okay. And where would she work there?

14 A They used to have a restaurant inside the station,
15 inside federal station. There used to be a little restaurant
16 called Just the Ticket.

17 Q Just the Ticket?

18 A Yeah. And she pretty much was in charge of that.

19 Q Okay. And did that business stop running as a
20 business at sometime?

21 A Yeah.

22 Q When did that restaurant close up if you remember?

23 A I can't recall the time, but it was -- prior to that

1 incident, it was I'd say at least six to eight months at
2 least.

3 MR. INGRAM: We're willing to stipulate
4 that business closed in December of 1999.

5 THE COURT: Okay. That's stipulated to.
6 The jury can accept that as true.

7 Q (By Mr. Bailey) Okay. Now, were you familiar with
8 the type of vehicle that Mr. Fingerhut drove?

9 A Yes.

10 Q What kind of car was that?

11 A Chrysler 300M.

12 Q And do you know what type of vehicle Donna Roberts
13 drove?

14 A I believe it was the same. They used to alternate
15 cars. They had a silver one and a red one.

16 Q Okay. Now, did you know a fellow by the name of
17 Nathaniel Jackson?

18 A Yes.

19 Q Did you ever see him at the Greyhound bus terminal?

20 A Yeah.

21 Q And how'd you get along with Donna Roberts?

22 A Good.

23 Q Okay. Were you aware of any problems between Donna

1 Roberts and Robert Fingerhut while you were working there?

2 A No.

3 Q Okay. Now on December 11th of 2001, that evening
4 between 6 and 10, was Mr. Fingerhut, while you were there and
5 Mr. Fingerhut was there, was anybody working with him?

6 A No.

7 Q And who were the other employees that would have
8 been working at that point in time for Mr. Fingerhut?

9 A The supervisor was Mr. Daniels and there was a
10 Melvin Williams and a Frank Reynolds.

11 Q Okay. And Frank Reynolds worked there part time for
12 Mr. Fingerhut?

13 A Yes.

14 Q Okay. What did he do there if you remember?

15 A Load and unload the luggage from the Greyhound
16 buses.

17 Q Okay. Are there cameras in that facility? Were
18 there cameras at that time in the facility, the bus station?

19 A Yes.

20 Q Do you remember how many?

21 A There were at least nine that I can recall.

22 Q Okay. You know there were cameras, though; right?

23 A Yes.

1 Q Did the cameras have recording devices? I mean did
2 they work?

3 A Yes.

4 Q And you were there, what was your job there at the
5 WRTA and the Greyhound bus station?

6 A Provide security services for, for the staff, the
7 bus drivers and the people in general at Greyhound.

8 Q Okay. Now, do you remember what Mr. Fingerhut was
9 wearing on December 11th?

10 A Blue jeans and I believe he had a sweat shirt on and
11 he used to wear a Cincinnati Reds jacket.

12 Q Did he have a sweater?

13 A Like a sweat shirt. He used to wear a lot of
14 sports, like hockey shirts.

15 Q Okay. Now, when Mr. Fingerhut worked there, what
16 would he be doing? I mean what's his job there?

17 A Basically to sell tickets, Greyhound tickets.

18 Q Okay. Did he ever help load and unload buses?

19 A That particular night, yeah, he did. He didn't have
20 nobody else working with him. So he had to do, load and
21 unload buses.

22 Q Would you spend much, did you spend much time that
23 December 11th watching him or being with him at that shift

1 that you worked that night?

2 A Yeah. I mean it's a small place so, you know,
3 everybody's always, you know, there.

4 Q How many offices are in that building?

5 A There's the WRTA office and right next to it there's
6 the ticket office for Greyhound.

7 Q Okay. So, and where the ticket agents are, is there
8 a window there?

9 A Yeah.

10 Q And how far away would you be from him when he'd be
11 in his office or ticket window?

12 A A lot of times I would stand like, like the offices
13 are divided by a cubicle kind of thing, little wall, so where
14 the front window is, there's an opening. So a lot of times
15 he'll be leaning over and I'll be on the other side and we'd
16 be talking.

17 Q Okay. And you talked to him on December 11th?

18 A Yes.

19 Q And how did he appear as far as his mood that night?

20 A Same as always. You know.

21 Q Did he joke a lot?

22 A Yeah.

23 Q Okay. Notice anything unusual about him?

1 A No.

2 Q Now, how many buses came to the Greyhound station
3 that evening while you worked?

4 A Two.

5 Q Do you remember the times that they came in?

6 A Yeah. There's one that came in around 7 and the
7 last one for the evening, that one comes at 9.

8 Q Was it 7 or 7:55?

9 A I believe it was around 7.

10 Q Okay. But there were two that came in; right?

11 A Yes.

12 Q And did the two leave?

13 A Yeah.

14 Q And Mr. Fingerhut, he'd what, load 'em and unload
15 'em?

16 A Yes.

17 Q Okay. Now, were you with him -- when he'd load and
18 unload the buses, did you, you were able to watch him?

19 A Yeah.

20 Q And did you notice the time -- you know what he was
21 driving that night?

22 A No.

23 Q Okay. But he, the cars that he would drive would be

1 which ones?

2 A The red one, a red 300M. That's what he normally
3 would drive.

4 Q What was the other car? You said there was a second
5 car?

6 A It was silver, but it was the same make and model.

7 Q And who would drive that?

8 A A lot of times, Miss Roberts.

9 Q You said they alternated cars?

10 A Yeah.

11 Q Okay. So now did there come a time when
12 Mr. Fingerhut left the bus terminal that night?

13 A Yes.

14 Q Okay. And did you see, did you notice the time that
15 Mr. Fingerhut left?

16 A About 9:00.

17 Q Okay. 9:00 that night on December 11th of 2001; is
18 that right?

19 A Yes.

20 Q Okay. And did he make any statements to you when he
21 left?

22 A I told him, "You're leaving early tonight."
23 And he'd say, "Yeah."

1 You know. He said he was getting out of there early
2 and that was pretty much it. That 9:00 bus usually don't
3 leave there until about, you know, usually it's late or 9:30
4 or something and somebody's got to stay there. And that
5 night, he was leaving early.

6 Q Okay. So you joked about the fact that he was
7 leaving early?

8 A Uh-huh.

9 Q Okay. Was he smiling?

10 A Yeah.

11 Q Did he carry anything with him that you noticed when
12 he left work?

13 A His regular like a briefcase kind of bag to carry
14 his paperwork.

15 Q Okay. He'd usually carry a briefcase --

16 A Yes.

17 Q -- with paperwork?

18 A Yeah.

19 Q Now, you indicated that there were video cameras
20 that would record the various areas of the Greyhound bus
21 terminal?

22 A Correct.

23 Q Okay. And that, those, those cameras, they would

1 show the, what people were doing that particular night?

2 A Correct.

3 Q I'm gonna show you a videotape, okay, and ask if the
4 places that are on this tape, if you can recognize the
5 different places that are on this tape.

6 MR. INGRAM: Your Honor, may I relocate
7 over to the far side?

8 THE COURT: Surely.

9 MR. BAILEY: For the record, I'm playing a
10 tape that's marked, a VHS tape that's State's Exhibit 319.

11 Q (By Mr. Bailey) Can you see that?

12 A Yes.

13 Q Do you recognize that area?

14 A Yes, I do.

15 Q And what is that area?

16 A That's, that was the entrance to Plaza Donuts.

17 Q Is this the Greyhound bus station and the WRTA
18 station --

19 A Right.

20 Q -- that you were talking about?

21 A That right there is the back entrance to the luggage
22 room.

23 Q Back entrance to the luggage room. And is this a

1 luggage cart?

2 A Yes. There's Mr. Fingerhut.

3 Q I'm sorry?

4 A That was Mr. Fingerhut.

5 Q That was Mr. Fingerhut?

6 A Yes.

7 Q And it showed one of those, that shirt that you were
8 describing?

9 A Right.

10 Q And this is, what's this?

11 A That's the Greyhound bus I believe.

12 Q What part of the station is that bus at?

13 A That would be, I don't know how to explain it, it's
14 right on the side. That's right on the other side. That
15 door open right there, that's the luggage door.

16 Q This is where the luggage door comes out?

17 A Yes.

18 Q And who is that?

19 A That's Mr. Fingerhut.

20 Q Now while this is showing different frames out
21 there --

22 MR. INGRAM: I'm going to object to
23 showing the video if he's not going to ask questions about it

1 or he's going to ask questions while it's being shown. It's
2 one or the other.

3 MR. BAILEY: I'm gonna pause it for a
4 second. Oh, well, let me go, I'll go all the way to the end
5 and then I'll ask the questions.

6 Q I'm gonna ask you to tell us when you see
7 Mr. Fingerhut on any of the frames here.

8 A That's Mr. Fingerhut right there walking towards the
9 door.

10 Q Right here?

11 A Yes. That's the other side of the door.

12 Q The same door that we saw on the bottom; right?

13 A The back luggage door.

14 Q I'm gonna pause this for a second here. Okay. Now,
15 are you familiar with that, the camera system, the security
16 system?

17 A Yes.

18 Q Okay. There were, there were two sets of numbers on
19 this --

20 A Uh-huh.

21 Q -- film? When I, the number at the top sort of
22 jumped up out of the frame, but what do those numbers
23 represent?

1 A The times, the date.

2 Q Okay. And if I unpause it, okay, okay, you can see
3 it says like 1635 and the other says 1734 with seconds after
4 it or part of the second. Well, what area is this now?

5 A That's the lobby at Federal Station. That's
6 Mr. Fingerhut.

7 Q Okay. And where are the offices, the ticket
8 window -- well, okay. This is back to that same area where
9 the bus was before?

10 A Yes.

11 MR. INGRAM: You better go back to that
12 top time.

13 MR. BAILEY: Okay. Let me pause it.
14 Okay. I'm gonna pause this for a second.

15 Q (By Mr. Bailey) There are two sets of time on here
16 and the date. It shows December 11th?

17 A Correct.

18 Q Which is the correct time?

19 A That would be that one right there on the bottom.

20 MR. INGRAM: Your Honor, I believe the
21 defense would be willing to stipulate that the accurate time
22 is the time on the top.

23 MR. BAILEY: I agree. We stipulate that

1 the accurate --

2 Q Actually, the accurate time is the top time?

3 A Well, see, that's in military time.

4 Q Right.

5 A All right? There was an hour difference in them
6 times due to the fact that the time on the, on our recording
7 machine was never changed because the main people from WRTA
8 take care of that, changing the time, and it was still on, it
9 was still on springtime. Instead of being an hour behind, it
10 was an hour ahead for the clocks.

11 Q Okay. So the VCR numbers or whatever are faster
12 than the actual time?

13 A Right.

14 Q So the actual time would be the 1956 and this would
15 be the factory time, right, the 2055?

16 A Yeah.

17 MR. INGRAM: You're going to succeed in
18 confusing me. The top time is accurate and the bottom time
19 is an hour off.

20 MR. BAILEY: Right. And we'd stipulate
21 that the top time is the correct time. The bottom time is an
22 hour, almost an hour different.

23 THE WITNESS: Correct.

1 Q (By Mr. Bailey) Where are the ticket windows in
2 relation to this lobby area?

3 A They would have been right up front.

4 Q This way?

5 A Yes.

6 Q Off to the right of the screen here?

7 A Yes.

8 Q Okay.

9 A There's Mr. Fingerhut.

10 Q That's Mr. Fingerhut?

11 A He already went by.

12 Q Okay. Okay. I'm gonna pause it for a second. Who
13 is that?

14 A That was Mr. Fingerhut.

15 Q Okay. That was Mr. Fingerhut?

16 A Yes.

17 Q Okay. Okay. I'm gonna pause it for a second. Who
18 is that?

19 A Mr. Fingerhut. He's leaving. He's leaving the
20 building at this point. He's exiting through the luggage,
21 through the back room, the luggage room.

22 Q And this is real close, in real time, it's close to
23 9:00 in the evening, this being an hour off?

1 A Right.

2 Q Okay.

3 A There's the bus pulling away. According to the
4 schedule, that bus is not supposed to leave until 9:05. And
5 as you can tell, it's well before.

6 Q He's leaving early?

7 A Yeah. Leaving before 9:00.

8 Q Now I'm pausing it again.

9 A That's Mr. Fingerhut.

10 Q And just about 9:00?

11 A Yes.

12 Q Okay. And he's leaving?

13 A Yes.

14 Q What's back in this area where he's going?

15 A That's just, that's just the walkway. At that time,
16 there was construction being done on the parking lot of WRTA.
17 So that day, he was parked behind the misdemeanor jail which
18 is across the street. So right there he's walking towards
19 the misdemeanor jail.

20 Q Okay. And this top part of it shows it's just 9:01.

21 A Right. Yes.

22 Q Officer, I'm gonna show you, that, what you
23 observed, that looked to be true and accurate as to what you

1 saw, well, having seen Mr. Fingerhut that night?

2 A Uh-huh.

3 Q Appear to be what he was wearing?

4 A Yes.

5 Q Now, I'm gonna show you some pictures I believe
6 you've seen before. I'm gonna show you what's been marked
7 for identification as 320-I. Okay. Does that appear to be a
8 frame from that video that we just saw?

9 A Correct.

10 Q And that has the time that's an hour off on it?

11 A Yes.

12 Q And I'm gonna show you what's been marked for
13 identification as State's Exhibit 320-D. Okay. Can you
14 identify that picture?

15 A Yes.

16 Q What is that?

17 A It shows Mr. Fingerhut exiting the building through
18 the luggage door.

19 Q Okay. And is that, that's, that little one, the
20 picture, D, that I showed you, that's in color?

21 A Yes.

22 Q And does that depict what he was wearing that night?

23 A Yes.

1 Q Okay. Now, that has both of the times on it; right?
2 The actual time up on top and the little numbers which aren't
3 reflected in the first photograph, State's Exhibit 320-I, but
4 320-D has both sets of numbers?

5 A Correct.

6 Q And the time, and it shows the time that he was
7 actually leaving?

8 A Yes.

9 Q Which was about 9:00 that night?

10 A Yes.

11 Q Okay. Did you ever see him again after that?

12 A No, sir.

13 MR. BAILEY: Thank you very much. Now
14 defense counsel will have an opportunity to ask you some
15 questions.

16 THE COURT: Cross?

17 MR. INGRAM: Yes, Your Honor.

18 CROSS EXAMINATION

19 BY MR. INGRAM:

20 Q Morning, Deputy Sanchez. How are you?

21 A Pretty good.

22 Q You're a Mahoning County Deputy Sheriff; am I
23 correct?

1 A Correct.

2 Q And in addition to your duties and responsibilities
3 with the Mahoning County Sheriff's Department, you also work
4 part time providing security services for the Greyhound
5 station in Youngstown?

6 A Correct.

7 Q But you're actually employed by the WRTA, which is
8 the Western Reserve Transit Authority?

9 A Yes.

10 Q That's the Youngstown bus system for lack of a
11 better term?

12 A Yes.

13 Q All of the jurors here are from Warren and that bus
14 station is in Youngstown. That bus station is actually on
15 what's called the west end of Federal Plaza; am I correct?

16 A Correct.

17 Q And what would be the street, Federal, Federal
18 Street would run east and west?

19 A Uh-huh.

20 Q What would be the street running north and south?
21 It's right at the corner there. Do you know?

22 A Fifth.

23 Q Fifth? And the west end of Federal Plaza, in terms

1 of business activity, is almost like a war zone, is it not,
2 boarded-up buildings, no business left, one bank?

3 A Correct.

4 Q And it's actually a bad area, isn't it?

5 A I guess. I mean whatever you want to call it.

6 Q Well, there's a need for security; am I right?

7 A Right.

8 Q And that bus station is open how many hours a day?

9 A From 6 a.m. to 11 p.m.

10 Q Is there security the entire time it's open? Is
11 there a deputy sheriff there the entire time it's open?

12 A At that time, yes, there was.

13 Q So in December of 2001, there was a deputy at the
14 Greyhound terminal or the WRTA terminal? And for purposes of
15 our discussion, we can use either term; okay?

16 A Correct.

17 Q There was a deputy there from the time it opened
18 until the time it closed?

19 A Correct.

20 Q Do you know who would have worked the morning shift
21 on December 11th of 2001 in terms of security? There was a
22 deputy there. Who was that person?

23 A I cannot recall that.

1 Q How about the, would there be one deputy before you
2 got there or is there two shifts before you would have gotten
3 there because you got there at 6; right?

4 A Yes. I got there at 6 and I relieved, that would
5 have been Deputy Mays.

6 Q Deputy Mays?

7 A Yes.

8 Q Do you know what time Deputy Mays would have
9 started?

10 A He would have started at 2:00.

11 Q And you know Donna from when she used to work at the
12 Just the Ticket restaurant; am I correct in that?

13 A Correct.

14 Q How long was she involved in the operation of Just
15 the Ticket restaurant?

16 A When I got there in July of '99, the place was
17 already, you know, they were already open.

18 Q So from July of '99 to December of '99, you'd see
19 her at the restaurant?

20 A Correct.

21 Q On almost a daily basis?

22 A Yes.

23 Q And the camera system which you so aptly described

1 for Mr. Bailey, there are nine of those cameras?

2 A Correct.

3 Q And they're not hidden cameras, are they? I mean if
4 you look, you can see them?

5 A If you know where they are. Some of them are inside
6 a bubble.

7 Q Some are inside a bubble?

8 A Yes. There's like a --

9 Q And the people that work there know of these
10 cameras, do they not?

11 A Yes.

12 Q And basically, it's common knowledge of people who
13 work for the WRTA or the Greyhound or Just the Ticket
14 restaurant that there's nine security cameras or that there
15 are security cameras?

16 A There are security cameras.

17 Q Those cameras are part of the overall security
18 apparatus of the building; am I right?

19 A Correct.

20 Q You're part of the security apparatus, the cameras
21 are another part of the security apparatus, and there may be
22 other parts that we don't know about? But for sure, you and
23 the cameras are part of the security apparatus?

1 A Correct.

2 Q For the general public, how many ways are there in
3 and out of this building?

4 A That building, there's a front entrance, there's one
5 entrance on the west side right in front of Federal and then
6 you can come in also through the Plaza Donuts, which is also
7 the front. It's on Federal Street. So I would say there's
8 three entrances to that building. And the luggage, but
9 that's just for personnel.

10 Q Now, if I were in charge of a security system and I
11 was placing cameras, I'd want to place cameras that looked at
12 the entrance so that if I ever needed to see documentation of
13 who came in and who came out, I could have that
14 documentation. Do you know, is there a camera that is
15 focused on each of these entrances?

16 A Yes.

17 Q There is?

18 A Yes.

19 Q And in the video which Mr. Bailey so challenging
20 played for you, did you see Donna Roberts and some black guy
21 in the middle of some doorways kissing and hugging?

22 A No.

23 Q Did you see Donna Roberts at all?

1 A Not that day.

2 Q On that video that he played for you, did you
3 see them?

4 A No.

5 Q So my first question is, you did not see her in the
6 video?

7 A No.

8 Q My second question is, you did not see her that day?

9 A No.

10 Q Handing you what has been marked as State's Exhibit
11 320-D, that's a photograph of Mr. Fingerhut leaving the
12 Greyhound terminal at approximately 9:00 on December 11th?

13 A Correct.

14 Q Of 2001?

15 A Correct.

16 Q And is he going out the door that would be facing
17 Federal Street or would he be going out the door facing
18 Commerce Street?

19 A That door is actually facing Fifth.

20 Q That door is facing Fifth?

21 A It's on the side. Yeah. It's on the side of the
22 building.

23 Q Okay.

1 A He's walking towards Commerce. That's where the
2 misdemeanor jail is at.

3 Q That's where what?

4 A That's where the misdemeanor jail is, the corner of
5 Fifth and Commerce.

6 Q The misdemeanor jail is at the corner of Fifth and
7 Commerce?

8 A Yes.

9 Q He's walking out the Fifth Avenue exit, which means
10 that he walks out going in a westerly direction, he leaves
11 the building, he turns right and then he heads north towards
12 Commerce Street?

13 A Correct.

14 Q And he actually has to cross Commerce Street
15 because, as I heard your testimony, he was parked behind the
16 misdemeanor jail?

17 A Correct.

18 Q How far of a distance do you think that is from the
19 entrance to, the exit from the, the exit from the bus
20 terminal to the parking lot behind the misdemeanor jail?

21 A I couldn't tell you.

22 Q Four or five football fields?

23 A No.

1 Q Two or three football fields?

2 A I'd say maybe one and a half.

3 Q Okay. When Mr. Fingerhut leaves, is he escorted by
4 anyone?

5 A No.

6 Q Was it his practice, was it the practice of the
7 security personnel to escort Mr. Fingerhut when he left?

8 A No.

9 Q And there was construction in that parking lot at
10 the time?

11 A Correct.

12 Q If it had not been for the construction, was it
13 Mr. Fingerhut's practice to park in the parking lot of the
14 Greyhound terminal itself?

15 A Correct.

16 Q And it was the construction that caused him to
17 deviate from that practice and park behind the misdemeanor
18 jail?

19 A Correct.

20 Q You didn't see what car he got into that night, did
21 you?

22 A No, I didn't.

23 Q And I believe you told Mr. Bailey that Donna Roberts

1 and Mr. Fingerhut had two Chryslers, 300Ms?

2 A Yes.

3 Q You don't know what years those were, do you?

4 A No.

5 Q You just know that one was red and one was silver?

6 A Correct.

7 Q One was red or maroon; is that right?

8 A Yeah.

9 Q And the other one was silver. Do I have those
10 colors right or am I wrong?

11 A No. That's pretty accurate.

12 Q That's about right?

13 A Yes.

14 Q Who generally drove the silver one?

15 A Miss Roberts.

16 Q Do you know if that was the newer of the two?

17 A Yeah. That was newer.

18 Q Do you know if she drove the silver one because it
19 had four air bags?

20 A (No response.)

21 Q You don't know. So if Donna generally drove the
22 silver one, then Mr. Fingerhut, I take it, would generally
23 drive the red one?

1 A Correct.

2 MR. INGRAM: No more questions, Your
3 Honor.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MR. BAILEY:

7 Q Deputy Sanchez, this security system with the tapes,
8 it doesn't, it jumps around, doesn't it?

9 A Correct.

10 Q And it may not go back to one area for a number of
11 minutes?

12 A I'd say seconds. Within seconds, it goes back. It
13 goes in frames.

14 Q Okay. I mean we watched this tape for, what, about
15 ten or fifteen minutes?

16 A Yes.

17 Q And it covered about four hours, I believe, in
18 there?

19 MR. INGRAM: Objection. That tape is
20 edited. We have not established, I was kind and did not
21 require that they establish the method of the editing, and
22 this is absolutely unfair.

23 THE COURT: The tape has been edited so

1 unless you have another line that you wish to go down to
2 establish how long the original tape was, I am going to
3 sustain the objection.

4 MR. BAILEY: Okay.

5 Q (By Mr. Bailey) Just to make sure, no question,
6 Robert Fingerhut left around 9:00 that night; right?

7 A That's correct.

8 MR. BAILEY: Okay. No further questions.

9 MR. INGRAM: No questions, Your Honor.

10 THE COURT: Deputy, thank you very much
11 for your time. You're excused.

12 THE WITNESS: Thank you.

13 THE COURT: State wish to call your next
14 witness?

15 MR. BAILEY: Yes. The State calls Kathryn
16 Thomas.

17 MR. INGRAM: May we approach sidebar while
18 she's coming in?

19 THE COURT: Surely.

20 (Whereupon, a conference was held at the bench.)

21 THE COURT: We're gonna save you until
22 after lunch, okay, because we're just gonna get started and
23 some of the attorneys have to review a couple items before we

1 can proceed with your testimony. So I apologize for that.

2 Ladies and Gentlemen, if you'd be back here at a
3 quarter to 1. That will give you an hour for lunch. You are
4 not to discuss anything about the case or form any opinion
5 until you return; okay? Thank you.

6 (At 11:43 a.m., the jury was excused for lunch and the
7 following proceedings occurred in open court.)

8 THE COURT: You had two motions in the
9 morning. I think that it was clear to everybody here, but I
10 don't know that it was specifically stated on the record that
11 I denied both those motions in light of what appears on the
12 record.

13 MR. INGRAM: Both of 'em or just one?

14 MR. JUHASZ: We didn't argue the second
15 one.

16 MR. INGRAM: We didn't argue the second
17 one. I don't think the second one is ripe for adjudication
18 yet. But clearly, the first one, Mr. Becker proffered a
19 State's Exhibit. You ruled that provided an independent
20 basis for a determination of the existence of a conspiracy
21 and overruled the motion.

22 THE COURT: And the second one was in
23 reference, it's going to come up when you get to the letters.

1 MR. JUHASZ: Correct.

2 THE COURT: Yeah. Yeah. You're correct.

3 That was -- I was taking the fact that both of those were
4 pretty much on the same thing. They aren't the objection and
5 the --

6 MR. INGRAM: The motion is different.

7 THE COURT: Yeah. The second motion went
8 to the fact of gratuitously giving all this, all the sexual
9 matters, the pillow talk between the two of 'em and the
10 letters that aren't relevant, they're objecting to that.

11 In that other case, they were admitted.

12 MR. INGRAM: I don't know that they were
13 objected to. And I refuse to, I refuse to be bound by the
14 evidentiary rules of that case.

15 THE COURT: That's correct. They weren't.
16 No, no. I'm not saying because they were admitted in the
17 other one because they weren't objected to on this basis.
18 They were objected to, but it was on some superficial reason.

19 MR. BAILEY: I'm sure defense counsel made
20 a good effort, did what they thought was proper.

21 THE COURT: Yeah. I don't mean to -- what
22 I meant is that it was not clarified as to the objection.
23 The objection, as given before, was not adequate to keep the

1 letters out of that case. That was not the proper --

2 MR. BECKER: Well, if we're gonna address
3 that, I simply would point out that this is a conspiracy and
4 the relationship is extremely important. And I think all of
5 the letters document the extent of that relationship, the
6 intensity of that relationship. And because the State is
7 bound by the highest burden of proof under the law, I think
8 it's very important and very relevant that all of the letters
9 are admitted because they are, quite frankly, every time I've
10 read 'em, and I've read them beginning to end probably three
11 times, every one of those letters, and every time I seem to
12 glean a little bit more that maybe I gloss over. So to say
13 that some are relevant and some are not relevant, I think
14 they're all relevant because they all were statements made
15 during and in furtherance of the conspiracy. And the
16 conspiracy was fueled by this, by this love for each other,
17 the hatred --

18 THE COURT: Well, I think that theory is
19 not incorrect. I will leave it at this for the time being.
20 I have not seen these so I have no idea what's in them. I
21 will throw this back to the defense, that if there are
22 letters that have nothing to do with the furtherance of this
23 conspiracy, you know, a short letter, I love you, okay, that

1 has nothing to do with the conspiracy. But otherwise, I
2 think the assumption that I will proceed upon here is that
3 all of these letters are in furtherance of the conspiracy and
4 will be admitted, but it's quite possible some of these
5 letters do not delve into what, you know, this background
6 conspiracy involves. You're going to have to go through
7 those and point them out.

8 MR. INGRAM: Your Honor, if I may,
9 although I should probably defer to Mr. Juhasz, but I'm a big
10 mouth so I'll just stumble right ahead. Why don't you give
11 us an opportunity as we go along here to show you what
12 specific letters we're talking about because obviously we're
13 not talking about all of them.

14 THE COURT: That's what I'm saying. It's
15 up to you folks.

16 MR. INGRAM: And we'll address it later.
17 And probably the right time to address it is when the State
18 rests. Go ahead.

19 MR. JUHASZ: I was gonna say two things.
20 One is that I did not know exactly how the State was gonna
21 proceed. These motions in limine, in particular the second
22 one having to do with the letters and any conversations in
23 the tapes that were purely just sexual and having nothing to

1 do with any conspiracy, I didn't know if they were gonna
2 attempt to put those in front of the jury before the Court in
3 some media fashion by putting them up on the overhead or
4 whatever. That's what the motion in limine was directed to.
5 It was not to supplant the normal arguments that take place
6 at the close of the State's case when we talk about exhibits.

7 I am, I have to tell you, however, troubled by what
8 I perceive as the Court's ruling and, in essence, reversing
9 the burden of proof because I think Rule 401 still requires
10 them to prove that each of those letters are relevant and I
11 think I just heard the Court say he'll assume they are
12 relevant.

13 THE COURT: No, no. You misunderstood
14 what I said. I asked you to point out, if you will, those
15 that you object to. They still have the burden of proving
16 that they're admissible. But as I say, in the last case, we
17 touched on this area, but I don't even remember what the
18 objection was based on before. It may well have been based
19 on the same thing, but we didn't, there was never any
20 analysis of each and every individual one. You've raised
21 that by your motion. I say that as a matter of convenience
22 because, otherwise, we'd have to go through every letter.
23 They would have to present them. It's merely a time-saving

1 device.

2 MR. JUHASZ: Understood.

3 MR. BECKER: Thank you, Your Honor.

4 MR. BAILEY: Thanks, Your Honor.

5 (Whereupon, a recess was had commencing at 11:48 a.m. and
6 concluding at 12:57 p.m.)

7 THE COURT: Okay. We're all here.

8 MR. BAILEY: State calls Kathy Thomas.

9 **WHEREUPON,**

10 **KATHRYN THOMAS,**

11 having been first duly sworn, according to law, was examined
12 and testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MR. BAILEY:**

15 Q Ma'am, do you want to tell the Court and jury your
16 full name?

17 A Kathryn Lynn Thomas.

18 Q And where do you live?

19 A 4962 Mahoning Avenue.

20 Q In what city?

21 A In Youngstown -- well, Austintown.

22 Q Austintown?

23 A Yeah.

1 Q Okay. And where are you employed?

2 A State Farm Insurance.

3 Q And your position there?

4 A I own the agency there.

5 Q Okay. And the name of the agency?

6 A And I'm an agent, also an agent.

7 Q I'm sorry?

8 A I'm also an agent.

9 Q You're an agent?

10 A Yes.

11 Q And you're the owner of the agency?

12 A Yes.

13 Q Okay. And how long have you been so employed?

14 A Since April 1 of 1988.

15 Q Okay. Do you have any other employees in the
16 office?

17 A Yes, I do.

18 Q What do you have?

19 A At the current time, I have three other full-time
20 employees.

21 Q Okay. Do you have any, what education and training
22 and experience do you have to hold your present position?

23 A I have a license in property and casualty with the

1 State of Ohio, also a license in life and health and a
2 Series-VI license.

3 Q And what is a Series VI license?

4 A That is a license that's required to sell mutual
5 funds and variable products.

6 Q And how long have you been licensed as an insurance
7 agent?

8 A Since 1988.

9 Q Okay. And let's see. Now, as an insurance agent
10 and the owner of your agency, are you familiar with different
11 insurance policies?

12 A Yes.

13 Q And have you been trained in interpreting different
14 insurance policies?

15 A Yes.

16 Q And have you had a client by the name of Robert
17 Fingerhut?

18 A Yes.

19 Q Do you recall approximately when Robert Fingerhut
20 became a client of yours?

21 A Approximately, I think it was around 1998
22 approximately. I'm not exactly sure because he was a State
23 Farm client before he was insured with me.

1 Q Okay. And during the time that he became a client,
2 you said he was a client with State Farm prior to your
3 insuring him?

4 A Yes. In Florida.

5 Q In Florida. And then did he return to this area?

6 A Yes.

7 Q And he came to you to get back with State Farm?

8 A Yes.

9 Q Okay. Who contacted -- how did you come into
10 contact with him? Did he contact you or did you contact him?

11 A He contacted me.

12 Q And do you recall what types of insurance
13 Mr. Fingerhut had with State Farm?

14 A We had several lines of insurance. We had his home,
15 his autos, business insurance, rental properties and life
16 insurance.

17 Q Okay. Did you know the defendant in this case,
18 Donna Roberts?

19 A Yes.

20 Q Okay. How did you meet her?

21 A Through Mr. Fingerhut.

22 Q Okay. Now, the vehicles that Mr. Fingerhut had
23 insured, do you remember what types of vehicles he had

1 insured?

2 A He had a 2000 and a 2001 Chrysler. They were both
3 the same type. He had, I believe, a Pontiac. I have to go
4 through my notes. He had several vehicles. Let me just make
5 sure of the makes. 1985 Ford Contour and a '85 Pontiac Grand
6 Prix.

7 Q Okay. And part of your job as an agent, are you
8 required to determine who the owner of the vehicle is?

9 A In this situation -- well, normally we just go with
10 whom they tell us. We don't require actual proof.

11 Q You don't need the certificate of title?

12 A Not necessarily.

13 Q Okay. Okay. And these auto policies, in whose
14 names, whose name or names were these policies listed?

15 A In Donna Roberts'.

16 Q Who came in to actually fill out the policy and
17 provide you the information?

18 A The majority of the time, I talked with
19 Mr. Fingerhut.

20 Q Okay. And who paid the premiums on the insurance?

21 A To my knowledge, Mr. Fingerhut.

22 MR. INGRAM: Objection, unless there's a
23 foundation there.

1 THE COURT: Sustained.

2 MR. INGRAM: I would move that the answer
3 be stricken.

4 THE COURT: The answer will be stricken.
5 The jury will disregard.

6 You may wish to lay a foundation for that,
7 Mr. Bailey.

8 Q (By Mr. Bailey) Okay. Do you know, over the course
9 of dealing with Mr. Fingerhut and his different insurance
10 policies, how would the policies be paid for?

11 A Usually by check. There have been occasions when it
12 was a personal check. I believe there were times when the
13 business check was written to pay for the policies.

14 Q Okay. And did Mr. Fingerhut ever bring in these
15 checks?

16 A Normally, they were mailed in on a couple occasions,
17 I personally picked up checks that were written by
18 Mrs. Roberts.

19 Q Okay. And with the, is there something that's known
20 as an additional driver or covered driver on an insurance, in
21 insurance parlance?

22 A Yes.

23 Q What is that? Can you explain that?

1 A Well, with State Farm, we will insure any licensed
2 driver that's driving with the permission of the owner.
3 However, anyone who resides in a household that we have cars
4 insured in that household, we underwrite that person
5 regardless if they are a relative or not because they have
6 access to drive the cars on a regular basis. So they would
7 be underwritten and they would be a listed driver in that
8 household on that policy.

9 Q Okay. So with these vehicles, who were the drivers
10 that would have been covered?

11 A Mr. Fingerhut and Donna Roberts.

12 Q Now, you had mentioned that there was, I believe,
13 life insurance?

14 A Yes.

15 Q And oh, with the vehicles, the coverage on the
16 vehicles, that would include both those Chryslers, the 2000
17 and 2001 Chryslers?

18 A Yes.

19 Q Was the house insured?

20 A Yes.

21 Q And do you remember the address of the house?

22 A 254 Fonderlac in Warren.

23 Q And as part of the policy on that house, did that

1 also include insurance on the contents of the house?

2 A Yes, it did.

3 Q Now, what about the businesses? You mentioned there
4 were businesses that were insured. What were those?

5 A We insured two Greyhound bus ticket offices, one in
6 Warren and one in Youngstown.

7 Q Okay. And who, based upon the insurance policy, who
8 was the owner of those businesses?

9 A Donna Roberts.

10 Q And did you maintain an insurance policy on
11 Mr. Fingerhut's life?

12 A Yes.

13 Q Okay. I'm gonna hand you what's been marked for
14 identification as State's Exhibit Number 323, which is in a
15 plastic envelope, and ask if you can identify that document?

16 A Yes. This is the life insurance policy that was
17 issued for Mr. Robert Fingerhut by State Farm Insurance.

18 Q Okay. And in, in that policy, the second page of
19 that policy, that lists the name of the insured?

20 A Yes.

21 Q And that person was?

22 A Robert B. Fingerhut.

23 Q Was there a date that policy was issued?

1 A August 12th of 1999.

2 Q Okay. And did that replace another policy?

3 A Yes, it did. It was a re-issue.

4 Q Of an earlier policy?

5 A Right. Previously to that, I had a \$250,000 policy
6 and we rewrote that to increase it to 300,000.

7 Q Okay. And that was back in '99?

8 A August 12th of '99 is when we increased it. The
9 original policy was back in '98.

10 Q Okay.

11 A The 250.

12 Q Okay. Now, a couple of pages before the end of the
13 policy, you have, what, an application page?

14 A Yes.

15 Q And we -- oh, were you involved in preparing this
16 particular document?

17 A Yes.

18 Q And who was the agent that sold that policy?

19 A I was.

20 Q And to whom did you sell that policy?

21 A Mr. Fingerhut.

22 Q And does that life insurance policy carry a
23 designation as a beneficiary?

1 A Yes, it does.

2 Q Okay. What is a beneficiary?

3 A A beneficiary is, on the, upon the death of the
4 insured, the proceeds go to that first-named beneficiary, the
5 primary.

6 Q And does that policy, does the policy typically make
7 a designation of a beneficiary?

8 A Yes.

9 Q Is there any requirement that the beneficiary have
10 any relationship to the insured?

11 A No.

12 Q Is there any requirement that such a policy go to a
13 spouse?

14 A No.

15 Q Now, are you familiar with beneficiary payments in
16 the State of Ohio and how benefits are paid out under a life
17 insurance policy?

18 A Yes.

19 Q Okay. And how does that work?

20 A Well, a life insurance policy is a contract between
21 the insurance company and the named insured. And whoever
22 they designate as their beneficiary, that's who the proceeds
23 would go to upon their death.

1 Q Now, when this application was filled out, who did
2 it list as, did it list a beneficiary?

3 A Yes.

4 Q And who did it list?

5 A It listed Donna Roberts.

6 Q Okay. What name was listed -- well, was this
7 application signed by Mr. Fingerhut?

8 A Yes, it was.

9 Q And what date did he sign it?

10 A August the 12th of 1999.

11 Q And did you witness it?

12 A Yes.

13 Q Okay. What name did he use for, was listed on that
14 as the primary beneficiary?

15 A Donna Roberts.

16 Q Can you --

17 A Oh, I'm sorry. Fingerhut.

18 Q Okay. I'm sorry. I didn't hear that.

19 A Donna Fingerhut.

20 Q Donna Fingerhut?

21 A Uh-huh.

22 Q Okay. And did it list her age at the time?

23 A Fifty-five.

1 Q And her relationship to him?

2 A Wife.

3 Q Now, after, after that time, in November of 2001,
4 did you have occasion to talk to Mr. Fingerhut again
5 regarding life insurance?

6 A He did call me and stated he wanted to take out more
7 life insurance.

8 Q More life insurance?

9 A Right.

10 Q Naming who as beneficiary?

11 A Well, we didn't discuss that. He just said he
12 needed more life insurance. And due to his schedule, him
13 being so busy, as a matter of fact, I even called him back to
14 remind him we have to get together to do it. And we just
15 weren't able to get our schedules together at the time to.

16 Q Okay. Now, I'm gonna hand you what's been marked
17 for identification as State's Exhibit 322, a certified copy
18 of a life insurance policy from Zurich Life. Have you seen
19 this document?

20 A Yes.

21 Q Have you seen this before?

22 A (Witness nods head.)

23 Q Okay. What is that document?

1 A This is a life insurance policy from Zurich Life
2 Insurance Company for, insured is Robert S. Fingerhut, and
3 the face amount is \$250,000.

4 Q \$250,000?

5 A Yes.

6 Q And when was that taken out?

7 A August 19th of 1998.

8 Q And towards the back part of that policy, is there
9 an application page?

10 A Yes, it is.

11 Q And does that designate a beneficiary?

12 A Yes.

13 Q And who does it designate as beneficiary?

14 A Donna M. Roberts.

15 Q And does it list her relationship to him?

16 A Fiancee.

17 Q And does it indicate how much of the policy,
18 proceeds, would go to her?

19 A A hundred percent.

20 Q A hundred percent?

21 A Would go to her, yes.

22 MR. BAILEY: Okay. Thank you very much.

23 I'm done with my questions and defense counsel will have an

1 opportunity to address you.

2 THE COURT: Mr. Ingram.

3 MR. INGRAM: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. INGRAM:

6 Q Afternoon, ma'am. Normally, the owner of a life
7 insurance policy names as beneficiary someone the owner loves
8 and cares for; correct?

9 A Yes.

10 Q The owner of a life insurance policy is the person
11 that controls the policy; am I correct?

12 A That's correct.

13 Q And ordinarily, the owner is not the beneficiary?

14 A Correct.

15 Q For the State Farm policy, and that's State's
16 Exhibit 323, the owner is Mr. Fingerhut?

17 A Yes.

18 Q And the beneficiary was named as Donna Roberts
19 Fingerhut; am I correct?

20 A On the application, it does say Donna Fingerhut.

21 Q Can I see that? I just, I thought it said Donna
22 Roberts Fingerhut.

23 A (Witness complies.)

1 Q Okay. The owner of the policy controls the policy,
2 not the beneficiary; am I correct?

3 A They do control the beneficiary also because they
4 could change it.

5 Q They can change the beneficiary?

6 A Right.

7 Q They can cancel the policy?

8 A Yes.

9 Q They could give the policy, if I own an insurance
10 policy --

11 A Uh-huh.

12 Q -- and I have Ken Bailey as my beneficiary, but he
13 has aggravated me in these proceedings so I choose to make
14 Mr. Becker beneficiary, I could just change it; right?

15 A Right.

16 Q And if I really want to get Ken's gun, instead of
17 changing the beneficiary, I'm gonna give Mr. Becker my policy
18 and I'll just transfer the policy to him and tell him he can
19 name his wife beneficiary or whoever he wants?

20 A Once he becomes the owner of that policy, he can
21 change the beneficiary. He has all rights to do whatever he
22 wants.

23 Q So I could give away my life insurance policy?

1 A Right.

2 Q And Mr. Fingerhut could have given away his life
3 insurance policy?

4 A Yes.

5 Q And he could have changed the beneficiary?

6 A He could have changed it, yes.

7 Q Before he gave -- he never gave it away?

8 A Right.

9 Q Since he never gave it away or transferred it, he
10 could have changed the beneficiary at any time?

11 A Correct.

12 Q Now you say in November of '01 Mr. Fingerhut --
13 well, let me back up. I'm sorry.

14 State's Exhibit 323, the \$300,000 State Farm policy,
15 that replaced a previous State Farm policy?

16 A Yes.

17 Q And the face value of that policy, did I hear you
18 say 250?

19 A It was \$250,000.

20 Q And then Mr. Fingerhut called you in November; is
21 that right?

22 A Yes.

23 Q Do you remember if it was the first of the month,

1 the last of the month?

2 A I would say more towards, I can't be exact about the
3 date, but I would say it was more toward the beginning of the
4 month because I know we went back and forth about a month
5 trying to get our schedules together so I could get him to do
6 the additional policy he requested.

7 Q So as I understand what you just told me, he calls
8 you about increasing the face value of the policy? That's
9 what it would be worth if he passed away?

10 A Right. He wanted more life insurance.

11 Q Okay. And you and he then played phone tag for a
12 month trying to hook up so that he could do that and you and
13 he just never get together?

14 A Correct.

15 Q Do you recall the last time you contacted him trying
16 to get together?

17 A I would, like I said, I know it was approximately a
18 month after he originally contacted me to say, you know, "We
19 haven't done this, we got to get together."

20 And he said, "I know. You know. I've been so
21 busy."

22 You know. He was a very busy person.

23 Q So that would put you and Mr. Fingerhut somewhere in

1 the beginning of December 2001?

2 A Right.

3 Q And the only thing that stopped Mr. Fingerhut from
4 increasing the policy was the fact that he was too busy to
5 get together with you?

6 A Right. We just didn't get together.

7 Q Well, he never told you, "I changed my mind and I
8 don't want to increase the amount of the policy"?

9 A No.

10 Q He never told you, "I changed my mind and I want to
11 make somebody else beneficiary"?

12 A No.

13 Q You would actually collect the payment, or payment
14 would be mailed to you? Did you receive the checks in
15 payment?

16 A We, I believe we set up an automatic draft from the
17 checking account to make the payment.

18 Q How about on the car insurance? How would you
19 receive payment for those?

20 A That was on a monthly billing also. I can't recall
21 right off the bat if that was automatically deducted.

22 Q Did I hear you tell Mr. Bailey that Mr. Fingerhut
23 gave you checks?

1 A Yes. Well, you know, like when we initially took
2 out policies, you'd have to have the, a premium to send in
3 with the initial application.

4 Q When he took out the car insurance, isn't it a fact
5 that Mr. Fingerhut told you to get the checks from Donna?

6 A Yes.

7 Q Did she deliver them to you or did you pick them up
8 from her?

9 A She either mailed them -- the majority of the time,
10 they were mailed. I talked to her personally, we discussed
11 the price, and she would mail the check to me.

12 Q Whose signature was on those checks?

13 A I --

14 Q Do you know?

15 A I'm not sure.

16 Q Well, did you tell Mr. Bailey Mr. Fingerhut's
17 signature was on any check?

18 A I don't recall making that statement.

19 Q Do you know for a fact whose signature was on any of
20 the checks in payment of the auto insurance, the life
21 insurance, the business insurance or the house insurance?

22 A On the, I believe the life insurance policy, he
23 instructed Donna to write the check. So she signed it. Now,

1 if she signed her name or his name, I can't tell you without
2 looking at the check. But she wrote the majority of the
3 checks.

4 Q She wrote the check?

5 A Yes.

6 Q Well, ordinarily when you sign a check, you sign
7 your own name, don't you?

8 A Usually.

9 Q For the cars -- let's just talk about the cars.

10 A Okay.

11 Q Did you ever see a check in payment of car insurance
12 that Mr. Fingerhut signed?

13 A No. If I, I would have to say the majority of the
14 time, I can't recall him actually writing the check. He
15 always told me to have Donna write it.

16 Q And again, if you write a check, you usually sign
17 your own name to the check?

18 A Yes.

19 Q Now I have to ask you some questions about car
20 insurance, but, you know, I fear to tread there. All I know
21 about life insurance is it costs me so, or car insurance, it
22 costs me so much I have to pay it four times a year.

23 I have five drivers. Three of them are teenagers.

1 Our company makes us assign a car, even though I'm the owner
2 of all five vehicles, I have to assign a car to myself, my
3 wife, and each one of the teenagers.

4 A Correct.

5 Q Is there a primary driver designated in this
6 automobile insurance on these two Chryslers?

7 A Yes. We always assign a primary driver.

8 Q Okay. So who is the primary driver on the 2001
9 Chrysler?

10 A That, I would have to check our company records to
11 see actually who was listed as the primary driver on each
12 car.

13 Q The State didn't ask you to do that?

14 A No.

15 Q You have nothing in your file that would indicate
16 that?

17 A No. It doesn't say in those files, but I could get
18 those records for you.

19 Q All right.

20 A Because we do, every vehicle is designated as to who
21 the primary driver is of that vehicle.

22 Q So you'll --

23 A However, everyone in the household is allowed to

1 drive it.

2 Q Sure. So I can drive my kid's car and my kid can
3 drive my car?

4 A Correct.

5 Q Mr. Fingerhut could drive the car that Donna was the
6 primary driver on or Donna could drive the car that
7 Mr. Fingerhut was the primary driver on?

8 A Right.

9 Q But you designate a primary driver for the person
10 that primarily drives that car?

11 A Drives that car. Exactly.

12 Q Will you please obtain that information and send it
13 to either Mr. Bailey or I?

14 A I certainly will.

15 Q Thank you.

16 Now I heard you say something about rental property
17 insurance. No, I did not hear you say something about --

18 A Yes. We had a rental dwelling policy.

19 Q Well, who was the named insured in the rental
20 dwellings property?

21 A Donna Roberts.

22 Q How many rental dwelling policies were there?

23 A We had two insured at the time.

1 Q And can you tell me the face amount of those
2 policies?

3 A One, I believe I only have one in here. One was at
4 253255 Washington Street, and we had 60,000 on that one.

5 I don't believe -- I don't have -- oh, yes. It's
6 494 Olive Avenue, and there was \$30,000, I'm sorry, 53,700 on
7 that building, on that property.

8 Q And the named insured is Donna Roberts?

9 A Uh-huh.

10 Q Which means she was the titled owner?

11 A Yes.

12 Q So if something happened to either one of those
13 rental properties, she got the money?

14 A Her, and if there's a mortgage company involved,
15 their interest would be paid off first and she would get the
16 remainder.

17 Q So if they burn down, you pay off the mortgage and
18 then --

19 A She would get the rest.

20 Q -- she would get the rest?

21 A Correct.

22 Q And who was the named insured in the business
23 policies?

1 A Same. Donna Roberts.

2 Q So if something happened with those businesses, she
3 would get the insurance proceeds?

4 A Correct.

5 Q And the same with the home owners?

6 A Yes.

7 MR. INGRAM: May I have a moment, Your
8 Honor.

9 THE COURT: Yes.

10 MR. INGRAM: Thanks, ma'am. No further
11 questions.

12 THE COURT: Redirect?

13 MR. BAILEY: No questions. Thank you very
14 much.

15 THE COURT: Thank you, ma'am.

16 THE WITNESS: Thank you.

17 MR. BECKER: Your Honor, the State would
18 call Kris Ellington.

19 * * *

20

21

22

23

1 WHEREUPON,

2 KRIS ELLINGTON,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Miss Ellington, I am going to ask you to scoot your
8 chair maybe a little bit closer to the microphone.

9 THE COURT: Do you mind being
10 photographed?

11 THE WITNESS: Yes.

12 THE COURT: You do? Okay. She does not
13 wish to the photographed.

14 Q (By Mr. Becker) Would you state your name for the
15 jury?

16 A Kris Ellington.

17 Q And Miss Ellington, do you own a business here in
18 Warren, Ohio?

19 A Yes, I do.

20 Q What business do you own?

21 A It's called the Final Cut.

22 Q And what kind of a business is it?

23 A It's a barber shop.

1 Q And where is that business located at?

2 A 402 East Market.

3 Q How long have you owned that business? Or how long
4 have you owned it at that location?

5 A It's about a year and a half, November of 2001.

6 Q So prior to December of 2001 is when you opened your
7 business?

8 A Yes.

9 Q And when you began that business in December of
10 2001, can you tell this jury what the hours were that you
11 were open, what days of the week and what hours you were
12 open?

13 A We're open from, Tuesday through Saturday -- Tuesday
14 through Friday, 9 to 5 and Saturday, 7 to 4.

15 Q And so the days of the week you'd be closed on would
16 be?

17 A Monday -- Sunday and Monday.

18 Q Okay. Thank you. Now, are you familiar with any
19 other businesses that are in the same building as your
20 business?

21 A Yes.

22 Q What businesses are located in the same building and
23 next to your business?

1 A The Greyhound bus station.

2 Q All right. Now, was that business, the Greyhound
3 bus business, in operation in December and November of 2001?

4 A Yes.

5 Q Now when you first began your business in November
6 of 2001, did you become acquainted with or familiar with the
7 two people who ran the Greyhound bus station?

8 A Just the female.

9 Q All right. And did you come to find out who that
10 female was?

11 A I never, I never knew her name. I just saw her.

12 Q And can you describe this individual for this jury,
13 the female?

14 A She was Caucasian, kind of short, like a reddish
15 brown hair.

16 Q Do you know how old she was?

17 A In her fifties maybe.

18 Q All right. Now, you did occasionally see the man or
19 not?

20 A In passing, yes.

21 Q Did you happen to catch what type of cars they drove
22 or operated?

23 A I believe they were Chryslers. One was red and one

1 was silver.

2 Q Do you recall which one the woman would drive and
3 which one the man would drive or were they interchangeable?

4 A Interchangeable.

5 Q All right. Now, at some point, you found out that
6 something happened to the man?

7 A Yes.

8 Q In December of 2001; is that correct?

9 A Yes.

10 Q And eventually, I believe, the police department
11 came to speak to you; is that correct?

12 A Yes.

13 Q Now, do you recall telling them about something that
14 happened in your business on Tuesday, December 11th, 2001?

15 A Yes.

16 Q All right. Tell this jury what you told the police
17 happened at your business on December 11th, which was a
18 Tuesday, of 2001?

19 A Just that the lady from the bus station brought
20 someone in to get their hair cut.

21 Q And can you describe the person that she brought in
22 to get the haircut on Tuesday, December 11, 2001?

23 A Black male, afro.

1 Q And did you take care of his services or?

2 A Yes. I cut his hair.

3 Q All right. And do you recall anything unusual about
4 his hands?

5 A No.

6 Q No bandages or anything on his hands?

7 A No.

8 Q No injuries?

9 A No, not that I noticed.

10 Q And do you recall who paid for this man's haircut?

11 A He did.

12 Q And do you recall how he was introduced or anything
13 that was said to you by the woman? Was there anything, any
14 introduction or anything said?

15 A No. She just brought him in, showed him where to
16 come and she left.

17 Q Okay. Do you see the woman that brought him in
18 there in this courtroom today?

19 A Yes.

20 Q Okay. Can you please identify her?

21 A She's sitting at the table with the flowered shirt
22 on.

23 MR. BECKER: Okay. And Your Honor, let

1 the record reflect the witness has identified the defendant
2 in this matter.

3 THE COURT: The record will show that.

4 MR. BECKER: I have nothing further.

5 THE COURT: Are you done?

6 MR. BECKER: Yeah.

7 CROSS EXAMINATION

8 BY MR. INGRAM:

9 Q Hello. How are you?

10 A Good. How are you?

11 Q Your barber shop is closed on Mondays so you know
12 this was on Tuesday, December 11th; am I right?

13 A Yes.

14 Q In the morning or the afternoon?

15 A That, I don't know.

16 Q Can you pinpoint it at any time during the day?

17 A I don't recall what time of day it was, no.

18 Q Okay. Well, what time did you open?

19 A We open at 9.

20 Q What time do you close?

21 A Five.

22 Q So it's somewhere between 9 and 5?

23 A Yes.

1 Q Did this guy that came in, he ask you to dye his
2 hair?

3 A No.

4 Q He ask you to do anything to try to change his
5 appearance?

6 A No.

7 Q Just wanted a haircut?

8 A Yes.

9 MR. INGRAM: No further questions.

10 THE COURT: Any redirect?

11 MR. BECKER: No, sir, Your Honor.

12 THE COURT: Ma'am, thank you very much.

13 THE WITNESS: Thanks.

14 MR. BECKER: Your Honor, the State would
15 call Barry Ricker.

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1 WHEREUPON,

2 BARRY RICKER,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Would you please introduce yourself to this jury,
8 please?

9 A Yes. My name is Barry Ricker. I am a service
10 advisor. I work down at Preston Auto Mall down in Warren,
11 Ohio.

12 Q And can you tell us how long you've worked at
13 Preston Auto Mall?

14 A At Preston Auto Mall, about five and a half. In
15 October, it'll be six years.

16 Q And what do you do at Preston Auto Mall?

17 A I am a service advisor, service consultant is what
18 they call it.

19 Q Now, during the course of your employment at Preston
20 Auto Mall, did you become familiar with an individual by the
21 name of Robert either Roberts or Fingerhut?

22 A Yes. I knew Bob as Mr. Roberts. I called him that
23 from day one, but I was familiar with Bob Roberts or

1 Mr. Fingerhut, yes.

2 Q All right. And could you tell us and tell this jury
3 under what circumstances you would see Mr. Roberts or
4 Fingerhut?

5 A He would bring in, there were two automobiles that
6 he would bring in for service, both of 'em Chrysler
7 automobiles, one silver and one red. He would bring the
8 vehicles in in the morning and drop them off for either
9 maintenance or mechanical repairs and we would make
10 arrangements on getting him transportation back to work and
11 things like that.

12 Q And what sort of arrangements would that include?
13 Did that include, perhaps, you driving him back to work?

14 A I never had the occasion to drive him back to work.
15 We would either have one of our dispatch people as far as a
16 driver take him in one of our automobiles or one of the sales
17 department would run him back down to work.

18 Q And do you, are you familiar with who would have
19 dealt with Mr. Fingerhut in the sales of those vehicles?

20 A I know that one of the salesmen, Carmen Olivia, was
21 his salesman. He usually dealt with Carmen on a full-time
22 basis.

23 Q Okay. And apparently Preston has some I guess

1 customer perks, for lack of a better term, that they offer
2 some of their customers in terms of taking care of their
3 vehicles?

4 A Sure. When you purchase a vehicle from Preston Auto
5 Mall, you're entitled to car washes for, say for instance,
6 the life of, as long as you own the vehicle. So anytime,
7 you're permitted to drive on down and you can turn your keys
8 in to anyone at the service department or anyone down in the
9 sales department and they would get the car washed for free.
10 Things like that.

11 Q Did Mr. Fingerhut or Mr. Roberts ever take advantage
12 of that service?

13 A I would see him come down. Whenever I saw him come
14 for service, I would primarily deal with Bob as far as his
15 automobiles are concerned. When he came down for, to talk to
16 either someone in sales or to come down to get the car
17 washed, I would see him and acknowledge him. A lot of times
18 he would never come, even come back to service because there
19 would be no reason for him to come back. He would just be
20 there just to get a car washed.

21 Q And he'd say hi to you?

22 A Sure.

23 Q And would he be in one or both of these vehicles or?

1 A He brought down either car.

2 Q Right. And did you ever become familiar with a
3 Mrs. Roberts?

4 A I dealt with Bob primarily probably 99 percent of
5 the time. In the history of having the two cars there, I
6 dealt with Mrs. Roberts I think one time. I had called Bob
7 to let him know his car was done and he had mentioned to me
8 the fact that he would not be picking the vehicle up, that
9 Donna would be coming down to pick the vehicle up. And
10 that's when, the one occasion I dealt with Donna.

11 Q That you recall seeing her?

12 A Correct.

13 Q Now, when he would bring these cars on and service
14 was performed on them, I'm not talking about the car wash,
15 were there documentations and things that had to be signed
16 for that?

17 A Definitely. Any time that a car comes in for any
18 kind of service work on the vehicle, a repair order is
19 initiated. We do the repair work that's stated on the repair
20 order and then when the customer comes to pick the vehicle
21 up, we review it with them and they sign the repair order.

22 Q All right. I'm gonna show you a series of exhibits
23 that have previously been marked as State's Exhibit 398 and

1 399.

2 First, I'm gonna show you what has been marked for
3 purposes of identification as State's Exhibits 398-A, as in
4 apple, through and including P. I'm going to ask if you
5 recognize what those various documents are. And just tell us
6 with respect to each letter and refer to the number and
7 letter what those documents are.

8 A Uh-huh. 398-A, for instance, was an occasion in
9 August of 2001 where the vehicle was dropped off here for
10 some service work.

11 Same thing with basically all of the copies of the
12 repair orders here. Basically, these are copies of the
13 accounting copies of the repair work that was done at, while
14 the vehicle was here for service.

15 Q And would Mr. Roberts or Mr. Fingerhut, as you knew
16 him, have to sign off on any of those documents?

17 A Correct. We do not permit the vehicle to leave the
18 premises unless the customer signs, unless there's a special
19 case where we deliver the automobile to the customer. That
20 would be the only time.

21 Q And would Mr. Fingerhut have signed those documents
22 in your presence?

23 A Correct. We escort the customers over to our

1 cashier's counter and explain to them any of the charges and
2 any of the repairs that were done and then we ask them to
3 sign at that particular time.

4 Q Now I notice that those documents, I believe, all
5 carry the name of Donna Roberts on the, I guess that would be
6 the account information?

7 A Correct.

8 Q All right. What did you know or did you know of any
9 relationship between Mrs. Roberts and Bob?

10 A I had, from the start when the vehicle came in for
11 service work, Bob identified himself as bringing the vehicles
12 in for repairs. What we do as service advisors, then, is we
13 pull the vehicle around into position as far as to get it
14 ready for service, we take the information from the car, as
15 in the vehicle identification number and the miles and enter
16 it into our computer. When we enter this information into
17 the computer, then the name, address, phone numbers, all the
18 information for the car comes up, and that's when it shows as
19 Donna Roberts. I had dealt with Bob on a first-name basis
20 for the entire time that he had his vehicle there. Whenever
21 we ran the vehicle information through and the repair order
22 was written up and then I contacted Bob, I assumed that it
23 was Bob Roberts.

1 Q Okay.

2 A I didn't realize that there was the difference in
3 the last names. So I always identified myself, called him
4 Bob. On the rare occasions when he wasn't at the phone, I
5 would ask for Mr. Roberts. There would be a little bit of,
6 uh, and then they would realize who I was asking for.

7 Q Okay.

8 A So.

9 Q Now, all of those documents that are 398-A through I
10 believe P I think is the last one on there, those are all
11 various documents for service provided at Preston?

12 A Correct. There are service records here. There are
13 also information here as far as the service contract that was
14 purchased on the automobiles here. There's also shipping
15 orders and delivery receipts here also for those two cars.

16 Q And I believe your name is also on those forms?

17 A Yes.

18 Q And additionally, it indicates with respect to the
19 398 Exhibits A through P, they indicate the model of the car,
20 as well as the color?

21 A Correct.

22 Q All right. And what is the year, the model and the
23 color of the exhibits contained in 398?

1 A 398-A shows this as a 2000 Chrysler 300M, and it's
2 red in color. They actually call it inferno red, but it's
3 known as red.

4 Q All right. And are all of those fair and accurate
5 copies of the originals, which I believe you still have at
6 Preston Auto?

7 A Correct.

8 Q Okay. Now I'm gonna ask you to look at State's
9 Exhibits 399-A through and including, they're out of order
10 here, 399-A through K, and ask if you recognize what those
11 exhibits are?

12 A Correct. Again, these are copies of the accounting
13 copies of the repair orders that, for the Chrysler 300M that
14 was silver in color that Bob would bring in for repairs.

15 Q All right. And are those, again, the same type of
16 documents and executed in the same manner as you previously
17 testified?

18 A Correct. All the same format, same information,
19 same spot for the customer signature, things like that.

20 Q And again, when you put this into your computer,
21 whose name would come up as I guess the person who bought
22 that vehicle?

23 A As the vehicle, it tells us that the vehicle is

1 titled to Donna Roberts, yeah.

2 Q And would your name also appear on those documents?

3 A Correct.

4 Q And those items, 399-A through, did I say G?

5 A K.

6 Q K. I'm sorry. Were those items, are those items
7 fair and accurate copies of the originals that are at
8 Preston?

9 A Yes, sir.

10 Q Now, do you recall when Mr. Robert Fingerhut or
11 Roberts would come to Preston, do you recall how he would
12 often be dressed?

13 A Very casual dresser. The thing I liked about Bob is
14 when we, he would drop his vehicles off, there'd always be a
15 little conversation --

16 MR. INGRAM: Objection. Non-responsive to
17 the question.

18 THE COURT: Yeah.

19 Q (By Mr. Becker) Okay. Just do you recall how he
20 would be dressed?

21 A Casual dresser. He would wear blue jeans. Most of
22 the time, he would wear sports jackets. Things like that.
23 Team jackets.

1 Q Now, do you recall the last day you saw Mr. Roberts
2 or Mr. Fingerhut?

3 A Would have been approximately December the 10th I do
4 believe it was. He had dropped the vehicle off for service.
5 We had done some service work and we had to order a part for
6 the car. So I had contacted him at that time and told him
7 that the vehicle was done, but I had to order a part. It was
8 ready for pick up and he could stop and get it anytime.

9 Q And were you there when he stopped to pick it up?

10 A December the 10th, I can't really remember if I was
11 there. We're a volume dealership, in that we usually deal
12 with 25 to 30 people a day. 5 to 6:00 in the afternoon is
13 the busiest time of the day. And a lot of times, we're so
14 busy at that particular time that Bob knew that if he came to
15 the counter and I was busy, he went right over to the cashier
16 to pick his car up.

17 Q All right. And when you saw him earlier on the 10th
18 of what you believed, did he appear to be concerned about
19 anything or did he appear to be normal?

20 A Just a regular day.

21 MR. INGRAM: Objection.

22 THE COURT: What is your objection?

23 MR. INGRAM: It calls for absolute

1 speculation.

2 MR. BECKER: Well, let's put it this way.

3 THE COURT: I will sustain the objection
4 if you wish to rephrase it at some point.

5 Q (By Mr. Becker) Did his actions or tone of voice
6 give you any indication that it was different for him that
7 day than any other day?

8 A Not at all.

9 MR. BECKER: Thank you very much. I have
10 nothing further.

11 THE WITNESS: Yes, sir.

12 MR. BECKER: Oh, wait, wait.

13 I have nothing further, Your Honor.

14 THE COURT: Do you wish to cross?

15 MR. INGRAM: Mr. Juhasz.

16 MR. JUHASZ: Just briefly.

17 CROSS EXAMINATION

18 BY MR. JUHASZ:

19 Q Mr. Ricker, good afternoon. For these vehicles that
20 you've been talking about, is it possible for someone to buy
21 a service plan, a service contract, for them?

22 A At the time of sale, our salesmen are instructed to
23 inform potential customers, our customers, that there is,

1 there are service contracts available where your oil changes
2 and tire rotations are paid for in advance. There's also
3 service contracts available for mechanical repairs.

4 Q Any of these documents Mr. Becker has put in front
5 of you this afternoon, do they indicate whether or not there
6 was such a service contract?

7 A Yes. I happened to glance through. I'd have to
8 look through the other one very closely, but I happened to
9 glance on the silver 300M that there is a, I do believe, it
10 may be, there, it's actually on the red automobile. There's
11 a copy of the contract, what they call the care-free car
12 protection, which is a mechanical repair service contract.

13 Q And who was the purchaser of that contract?

14 A It is titled under the name of Donna Roberts.

15 Q Okay. As were both of the cars, if I understood
16 your testimony; is that right?

17 A Correct. Yes, sir.

18 Q Now, you indicated that had Mr. Fingerhut, or
19 Mr. Roberts as you knew him, would mostly, you'd deal mostly
20 with him; correct?

21 A Yes, sir.

22 Q Incidentally, when you called him Mr. Roberts, did
23 he ever correct you?

1 A Not one time, no.

2 Q All right. It is not unusual in your business, is
3 it, for somebody who's not the owner to bring in a vehicle
4 for service?

5 A Correct.

6 Q You do a lot of high end vehicles like BMWs and
7 things like that; correct?

8 A That is correct. I have, on occasions, I've been
9 there with BMWs for almost six years and there are still
10 customers I've never met.

11 Q Okay. So you've never met the owner cause somebody
12 else always brings them in; is that what you're saying?

13 A Correct. Yes.

14 MR. JUHASZ: Thank you very much.

15 THE COURT: Redirect?

16 MR. BECKER: I have nothing further, Your
17 Honor.

18 THE COURT: Mr. Ricker, thank you very
19 much.

20 THE WITNESS: That's it? Sure.

21 MR. BECKER: Carmen Olivia.

22 * * *

23

1 WHEREUPON,

2 CARMEN OLIVIA,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BECKER:

7 Q I'm gonna ask you to maybe try and speak as closely
8 as you can to the microphone there.

9 A Okay.

10 Q So everyone in the courtroom can hear you.

11 A Sure.

12 Q Just for the record and for this jury, will you
13 introduce yourself?

14 A Carmen Olivia.

15 Q And Mr. Olivia, where do you work at?

16 A Preston Chrysler/Jeep/BMW.

17 Q And where is that located at?

18 A That's 3843 Youngstown Road, Warren, Ohio.

19 Q And what is it that you do at the Preston Auto Mall?

20 A Sales rep.

21 Q And how long have you been with Preston Auto Mall?

22 A Be nine years.

23 Q All right. Now, during the course of your

1 employment at Preston Auto Mall, did you become familiar with
2 an individual by the name of Robert either Fingerhut or
3 Roberts?

4 A Mr. Roberts.

5 Q And can you tell this jury, was it through the --
6 can you tell this jury whether it was through the sale of
7 more than one car or multiple cars?

8 A It was more than, it was '98, '99, 2000, 2001. Four
9 cars.

10 Q And do you recall the makes and models of those
11 cars?

12 A Yes. '98 Sebring, '99 300M, 2000 300M, 2001
13 Chrysler 300M was the last one.

14 Q Now eventually, did you become aware that this
15 individual's name was not Mr. Roberts, but actually
16 Mr. Fingerhut?

17 A Well, I knew his last name was Fingerhut. We called
18 him, we just all called him Mr. Roberts.

19 Q Was there a reason for that?

20 A That's what he said call him. Call him Mr. Roberts.

21 Q Okay. And were those cars that he got from Preston,
22 do you know whether they were purchased or leased?

23 A They were leased.

1 Q And in addition to purchasing or leasing those, do
2 you know whether he would purchase or, I don't know if you'd
3 call it a purchase when you lease it, but would he obtain a
4 service contract?

5 A Sure.

6 Q That's like an added and above insurance sort of, I
7 guess, above what the warranty, the manufacturer's warranty
8 covers?

9 A Right. Uh-huh.

10 Q And he would be interested in those?

11 A On the extended insurance?

12 Q Yeah. Is that what they refer that to?

13 A Well, when there's a lease, it's standard. You have
14 to have, the only extra insurance is gap insurance.

15 Q All right.

16 A That's mandatory.

17 Q Would he be interested in that?

18 A It's not a matter of being interested. He wasn't
19 involved in that end anyway.

20 Q All right. And when he would come in to lease these
21 cars, I assume all of them were leased?

22 A Yes.

23 Q The ones you described?

1 A Yes.

2 Q Would he generally negotiate with you I guess?

3 A Yeah. He picked every car and negotiated it with
4 me.

5 Q And during this time where you would negotiate and
6 lease these, was a female present with him?

7 A No, sir.

8 Q But eventually, you did come to know that there was
9 a female that he was, I don't know to refer to as wife, but
10 as a significant other?

11 A Sure.

12 Q And whose name were those cars that he would lease
13 from you, whose name were they placed in?

14 A Donna Roberts, his wife.

15 Q Did you come to know who Donna Roberts was?

16 A Yes.

17 Q And who did you find out Donna Roberts was through
18 your business relationship with Mr. Fingerhut?

19 A I knew that was his wife.

20 Q And what is it that Donna Roberts did regarding the
21 negotiation of the lease of those vehicle?

22 A She just came in to sign on the lease contracts and
23 take --

1 Q Basically just sign some paperwork?

2 A Right. Excuse me. And take delivery of the
3 vehicle.

4 Q All right. Now, does Preston have any services that
5 I guess they give to customers that are like maybe a perk?

6 A Yeah. Feature and benefits, Monday through
7 Saturday, anytime, come in for a free car wash, free rental,
8 free loaner on an overnight stay. We had a good relationship
9 with Mr. Roberts. We would go to the bus terminal, pick up
10 the car, bring it over for service, bring it back anytime he
11 needed that.

12 Q And he, how often would you see Mr. Roberts or
13 Mr. Fingerhut?

14 A Oh, I'd see Mr. Roberts probably at least once a
15 week. He was particular with the cars, keeping 'em clean.

16 Q And that was because, yeah, he wanted to keep them
17 clean?

18 A Cleaned and serviced.

19 Q And how often would you see this Donna Roberts?

20 A I seen Donna probably four or five times, on time of
21 signing on deals and me going over the vehicle with her to
22 take delivery of it.

23 Q Would those be about the only times you would see

1 her?

2 A Yeah. I didn't see Donna much, other than signing
3 and taking delivery.

4 Q All right. Now, do you recall the last two vehicles
5 that Mr. Fingerhut leased from Preston?

6 A Sure.

7 Q And what vehicles were those?

8 A 2000 300M, 2001 300M.

9 Q Do you recall the colors of those vehicles?

10 A Inferno red was the 2000. Silver mist metallic was
11 the 2001.

12 Q And would Mr. Roberts or Mr. Fingerhut bring both of
13 those in for the service and this perk for the car wash?

14 A Absolutely, yeah. Or we would go to him if it
15 was --

16 Q And pick 'em up?

17 A If he was too busy, we would go to him.

18 Q Now, do you recall the types of keys for those
19 automobiles that Mr. Fingerhut had?

20 A Sure. I don't even need to see 'em.

21 Q Well, I'm gonna show 'em to you anyway. Go ahead
22 and describe them if you'd like.

23 A Just had a lot of keys. There was a baseball on it

1 usually, a little thing of a gym bag, a key ring, had a
2 little ring on there. Had a lot of keys.

3 Q You would have seen those or how would you have come
4 into contact with those keys?

5 A I would take the car back to get it washed, cleaned.
6 I would bring it to Barry for service.

7 Q You're referring to Barry Ricker?

8 A Yeah.

9 Q I'm gonna show you what's been marked for purposes
10 of identification as State's Exhibit 269 and ask if you
11 recognize what State's Exhibit 269 is?

12 A That's them.

13 Q You weren't kidding when you said a lot of keys,
14 were you?

15 A No. I took care of 'em, you know, five years
16 almost.

17 Q And throughout your relationship, that basically was
18 the keys that he would give you to the vehicle?

19 A Yeah. Yes, sir.

20 Q I assume he had his car in for a lot of repairs to
21 the ignition?

22 A Yeah. Right.

23 Q Do you know, through any conversation, whether

1 Mr. Fingerhut or Mr. Roberts was any type of sports
2 enthusiast or collector?

3 A Yeah. He was a collector. He wore jerseys every
4 time he would come in.

5 Q All right.

6 A NFL jerseys, any professional activity. He actually
7 personally gave one to my son, Anthony. We were Dolphin
8 fans, and he brought one in and he said, "Give this to your
9 son from me."

10 Q And do you recall the last time you saw
11 Mr. Fingerhut alive?

12 A Yeah. It was probably a week before he came in for
13 his last visit to see Barry, which would have been on the
14 10th, I believe, of December.

15 Q All right. Did you get a chance to --

16 A Because we ordered a part for him.

17 Q All right. Did you get a chance to speak to him
18 that day?

19 A Just "Hello. How are you? Is everything okay?"
20 He said Barry ordered a part for him.

21 Q Okay. And was there anything in his mannerisms or
22 tone that indicated to you that something was not right?

23 A No. He was always a very polite man. Everybody

1 liked him.

2 Q The individual that you came to know as Donna
3 Roberts, do you see her in this courtroom today?

4 A Sure.

5 Q Could you please identify her?

6 A Excuse me?

7 Q Could you please point to her, describe what she's
8 wearing?

9 A Yeah. Right here to my right (indicating.)

10 MR. BECKER: Please allow the record to
11 reflect that he has identified the defendant in this case,
12 Donna Roberts.

13 THE COURT: Yeah. The record will
14 reflect.

15 MR. BECKER: Your Honor, I have no further
16 questions of this witness.

17 THE COURT: Cross.

18 CROSS EXAMINATION

19 BY MR. JUHASZ:

20 Q Mr. Olivia, good afternoon.

21 A Good afternoon. How are you?

22 Q I'm fine. How are you?

23 A Good, sir.

1 Q I'm just gonna take a couple minutes and ask you a
2 couple questions based on some of the things that
3 Mr. Becker asked you about.

4 A Okay.

5 Q If I understand you, you were involved in dealing
6 with Mr. Fingerhut, or Mr. Roberts as you knew him, in four
7 different vehicles; is that right?

8 A Yes, sir.

9 Q Okay. Each one of those were leases; correct?

10 A Yes.

11 Q Do you also sell vehicles there at Preston?

12 A Sure. Sell, lease.

13 Q But these all happened to just be leases?

14 A Yes. Uh-huh.

15 Q Before the, the silver is the newest of the two
16 cars?

17 A That would have been the latest one.

18 Q Okay. Was there a trade-in of a previous leased
19 vehicle for that silver one?

20 A Yeah. But the 2000 would have been the trade-in, of
21 course, on the '01.

22 Q Okay. When you say the 2000, are you talking about
23 the inferno red one?

1 A The inferno red, yeah.

2 Q Okay. Before the red, was there another car, a
3 burgundy car?

4 A There was. It was called cranberry. It was a '99.

5 Q Cranberry?

6 A It was a '99. We call it cranberry. That's the
7 factory name, cranberry.

8 Q And that was a, did you say a '99?

9 A Yes, sir. Uh-huh.

10 Q If you remember, then, there would have been a point
11 in time when the two cars that were leased were the cranberry
12 and the inferno red; am I right?

13 A Right.

14 Q And then the cranberry lease would have been expired
15 or whatever happened with it, and the silver mist one that
16 you talked about --

17 A They weren't expired. They, from me remembering,
18 there were, it was a trade-in.

19 Q Okay.

20 A That cranberry was a trade-in where we pay off the
21 balance and --

22 Q All right. So the lease was still in existence?

23 A Sure. Uh-huh. We'd just pay it off.

1 Q Just decided to upgrade to the silver mist car?

2 A That's right.

3 Q All right. All of the cars that you dealt with with
4 Mr. Roberts or Mr. Fingerhut, whose name was on all of the
5 leases?

6 A His wife did all the signing.

7 Q Donna Roberts?

8 A Donna, yes.

9 Q Okay. You mentioned, when Mr. Becker was asking you
10 some questions, about seeing her when she would come in to I
11 think you said take delivery of the vehicle?

12 A After signing and sitting with our business manager.

13 Q Okay.

14 A Of course I'd wait for her and take care of her on
15 making sure she knew everything about the car before she
16 drove off in it.

17 Q All right. That's what I'm interested in finding
18 out. Is it, is something required, is it your business
19 practice that when somebody leases a vehicle, the person who
20 leases it to 'em, your phrase is take delivery, you sort of
21 go over the car with them, make sure they understand --

22 A They know every button on that car. Sure. Yeah.

23 Q Okay. Because that person who signs the lease is

1 the person who's legally responsible, for example, if they
2 return the car damaged at the end of the lease; is that
3 right?

4 A That person on the lease contract.

5 Q Who's on the lease, correct?

6 A Absolutely. Sure.

7 Q Now, I assume when somebody applies for a lease,
8 there is also a process of checking credit to make sure that
9 you're gonna go through with the lease?

10 A Their credibility is there and approved, sure.

11 Q All right. And the credit that would be checked in
12 the case of all these leases that we're talking about would
13 be Donna Roberts; correct?

14 A That's correct.

15 Q Not Mr. Fingerhut?

16 A Donna Roberts, yeah.

17 Q The 2001 silver mist, if you recall, is that a car
18 that has four air bags?

19 A No. Dual air. Just front dual air bags.

20 Q Okay.

21 A It didn't have the side air bags.

22 Q On the silver one?

23 A Right.

1 Q Okay. Do any of the cars have the side air bags
2 that you can recall, any of the four that we're talking
3 about?

4 A No.

5 MR. JUHASZ: Thank you.

6 THE COURT: Redirect?

7 MR. BECKER: Nothing, Your Honor.

8 THE COURT: Sir, we thank you.

9 MR. BECKER: Thank you very much.

10 THE WITNESS: Okay.

11 MR. BAILEY: State calls Jose Flores.

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1 WHEREUPON,

2 JOSE FLORES,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BAILEY:

7 Q Good afternoon, Mr. Flores. Do you want to tell the
8 Court and the jury your full name and where you live?

9 A My name is Jose Torres Flores. I live in Mansfield,
10 Ohio.

11 Q Okay. And how long have you lived down there?

12 A I've lived in Mansfield for --

13 Q Approximately.

14 A -- about seven months.

15 Q Okay. And before that, where were you living?

16 A I lived at the Wagon Wheel.

17 Q I'm sorry?

18 A Wagon Wheel.

19 Q The Wagon Wheel. And what is the Wagon Wheel?

20 A The Wagon Wheel is a motel.

21 Q And where is it located?

22 A 7015 Market Street, Boardman, Ohio.

23 Q Okay. And how old are you now?

1 A I'm 24. I'll be 25 tomorrow.

2 Q Okay. And how old were you back in December of
3 2001?

4 A I should have been 23.

5 Q About 17 months ago. Okay. Now, I'm gonna direct
6 your attention back to December of 2001. Can you tell us
7 what you were doing at that time?

8 A Say the date again.

9 Q December of 2001.

10 A December?

11 Q December. Right. The month of December in 2001.
12 You were living at the Wagon Wheel?

13 A (Witness nods head.)

14 Q Okay. You've got to answer for our court reporter.

15 A Yes, I was living at the Wagon Wheel.

16 Q Okay. And what was your employment at that time?

17 A I was the general manager.

18 Q Of the Wagon Wheel?

19 A That's correct.

20 Q Okay. How did you become manager of or when did you
21 become manager of the Wagon Wheel?

22 A In August.

23 Q Of 2001?

1 A Of that year.

2 Q And can you describe this motel, the size of this
3 motel?

4 A It's got, I can't remember now, but it's got about
5 21 rooms, two jacuzzi suites. And that's all. It's not very
6 big.

7 Q Okay. I'm gonna move this closer a little bit to
8 you; okay? Let's see if it picks up your voice a little.

9 A Okay.

10 Q Can you tell us again?

11 A It's got about 21 rooms that I can remember, two
12 jacuzzi suites.

13 Q Okay. And you were the general manager?

14 A Yes.

15 Q How many levels on this hotel?

16 A It's just a single-level motel.

17 Q Okay. And where would it be located in regards to
18 the Southern Park Mall down in Boardman?

19 A I'd say it's about two blocks off of 224.

20 Q Going towards Youngstown?

21 A Going toward Youngstown.

22 Q Okay. What is that, Route 7 over there, Market
23 Street?

1 A Yeah. Market Street.

2 Q Okay. Now, I'm gonna direct your attention to
3 December 6th of 2001. At that time, do you recall seeing a
4 woman that paid cash for a room about which you were
5 contacted by the police later?

6 A Yes.

7 Q Okay. And can you tell us about how that
8 transaction occurred and about this woman who came in?

9 A First when she came in, she wanted to see the room.

10 Q Okay.

11 A After she saw the room, she asked if she could hold
12 it. And I don't really remember too much, but I remember
13 that she said she would come by and check it out again.

14 Q Okay. This room that she checked out, what kind of
15 room was it?

16 A It was our jacuzzi suite, room 101.

17 Q Okay. And how much did that room cost?

18 A That room was 95, plus tax.

19 Q Okay. With tax, it would have been?

20 A 106.40.

21 Q \$106.40

22 A Yep.

23 Q Okay. And room 101, when you say it's a jacuzzi

1 suite, what's that mean?

2 A It's got a king size bed. It has, it has the
3 jacuzzi in it. It also has a, like a small shower/sauna
4 thing where it steams up. It's like a bridal suite. It's
5 bigger than all the other rooms. It's got steps where you
6 step up to get to the jacuzzi level in room 101.

7 Q Okay. Does it have any reflecting surfaces like
8 mirrors?

9 A Yes. It has reflecting --

10 Q Can you move up a little bit because apparently the
11 jurors are having trouble hearing.

12 A Okay.

13 MR. BAILEY: Were you able to hear any of
14 that?

15 JUROR NO. 12: Yeah.

16 Q (By Mr. Bailey) Okay. Tell us about the, this room
17 had mirrors?

18 A Yes. The room has mirrors. On the jacuzzi, it has
19 mirrors on both sides, okay, because the rest of the jacuzzi
20 goes to the room and it's open. But by the jacuzzi, it goes
21 on the corner. Where the walls are, there's mirrors there.
22 There's also mirrors on the king size bed. Where the
23 headboard would be, there's mirrors. And you can dim the

1 lights. And then above the bed, there's a mirror also.

2 Q Mirrors on the ceiling?

3 A Uh-huh. Ceiling mirrors.

4 Q Okay. This is one of your larger rooms?

5 A Yes.

6 Q How many of these jacuzzi suites do you have at the
7 Wagon Wheel?

8 A We only have two.

9 Q Okay. Now, I'm gonna direct your attention to
10 December 9th, 2001. Were you working on that day?

11 A Yes.

12 Q I'm gonna show you what's been marked for
13 identification as State's Exhibit 312. You know what? Let
14 me move this other stuff off of here for a second. Okay.
15 I'm gonna show you what's been marked for identification as
16 State's Exhibit 312. It's an envelope that came out of an
17 envelope that contains a piece of paper. And I'm gonna cut
18 this envelope open. Okay. 312 contains a little index card.
19 Okay. Have you seen that before?

20 A Yes.

21 Q And what is that?

22 A This is the, these are receipt cards that we fill
23 out for each customer that comes into the hotel. We identify

1 the car and the person.

2 Q Okay. And do you recognize the writing on that
3 card?

4 A I know which writing is mine, and I know which
5 writing isn't.

6 Q Okay. So you were involved in, this is a guest
7 register receipt?

8 A Right. Normally, the guest fills it out. Sometimes
9 they just give you ID and you can fill it out, the manager
10 fills it out.

11 Q Okay. And this particular day, December 9th of
12 2001, what happened that particular day when this receipt got
13 filled out?

14 A I can't remember much about the day except for key
15 things that -- the key things that I remember are things that
16 I have to go over. The only thing I remember about that day
17 is Nathaniel Jackson and Donna Roberts coming in. I don't
18 remember much else about that day.

19 Q You're saying you don't remember the rest of the
20 day. You remember them coming in?

21 A Yeah. Of course I remember.

22 Q Okay.

23 A I've been, I have to remember.

1 Q Okay.

2 A Nothing else about the day is important.

3 Q Okay. Well, tell us about them coming in.

4 A I remember I was in the office. They drove into the
5 parking lot, turned the car toward the office facing Market
6 Street. Nathaniel Jackson came in. He paid. I don't
7 remember if he paid in full or for the rest of what the
8 deposit was left.

9 Q Well, let me stop you for a second. You say
10 Nathaniel Jackson and Donna Roberts came in or they were
11 there. They were in a car?

12 A They were in the vehicle.

13 Q Okay. What kind of car was this?

14 A It was a Chrysler.

15 Q Do you remember what color it was?

16 A It was like a burgundy color, red. I don't know how
17 you say that.

18 Q Okay. Do you remember what model it was?

19 A The model was a 300M.

20 Q 300M Chrysler?

21 A Yes.

22 Q Do you remember the year?

23 A No.

1 Q Okay. And the woman, okay, the woman that came with
2 him that day, was this the same woman that had been there a
3 couple days before?

4 A Yes.

5 Q Okay. And you received payment for the room I take
6 it?

7 A Yes.

8 Q And how much was that room?

9 A The total was 106.40, including tax.

10 Q Okay. And you said the man came inside?

11 A The man came inside the office.

12 Q And where was the woman?

13 A She was in the vehicle.

14 Q Okay. And when the man came in, what information
15 did you mark, was marked down on the receipt?

16 A His, he filled out what's on this card. His name.

17 Q What was the name?

18 A Nathaniel Jackson. An address.

19 Q What was the address he listed?

20 A 309 South Pearl, Youngstown, Ohio. And he also
21 filled out the vehicle, and it says 300M Chrysler 2000, and
22 then the other thing filled out is the number in party and
23 there's the number two written there.

1 Q So there were two people in that party?

2 A Yes.

3 Q And this is for what room?

4 A This was for room 101, the jacuzzi suite.

5 Q Okay. And this woman, can you describe her?

6 A I don't remember much about her. She had red hair.
7 She was light-complected. She seemed to me she was somewhere
8 in her forties. That's about all I can remember. She was
9 really small -- she was smaller.

10 Q Okay. What was her race?

11 A She was Caucasian.

12 Q And the male?

13 A He was African American.

14 Q Okay. And about how tall was this woman?

15 A I don't know. I'd have to say around 5'2." I'm not
16 sure.

17 Q Okay. Now, did you work that week then?

18 A I work every day.

19 Q Okay. Now, this room, was this ready for their
20 occupancy right away?

21 A No.

22 Q Why not?

23 A I had customers that left late that day. They had a

1 late check-out.

2 Q Okay. So what happened?

3 A I needed to finish doing a few things to the room so
4 it could be prepared. There was some cleaning that needed to
5 be done.

6 Q And was that done?

7 A That was done before they entered the room.

8 Q Okay. Now, what did they do during this time that
9 they couldn't enter the room?

10 A They were sittin' in the vehicle, which they had
11 pulled up into the spot which was empty which was reserved
12 for room two, but since room two and room 101 are next to
13 each other, you know, it doesn't matter who takes the spot.

14 Q Okay.

15 A And that's the spot they were sittin' in.

16 Q And what were they doing?

17 A They looked like they were talking and they had
18 music playing cause I could hear it.

19 Q You could hear it?

20 A Yes.

21 Q What kind of music?

22 A It was like hip-hop.

23 Q Okay. And about how long did it take you to get the

1 room in order?

2 A I can't remember.

3 Q Okay. Now, eventually, they did occupy that room?

4 A Yes.

5 Q How many days did they occupy that room?

6 A They stayed overnight.

7 Q And during that time, that evening, did you get any
8 phone calls from them about the room?

9 A Yes, I did.

10 Q And what was it about?

11 A I had complaints about the heat.

12 Q Was there anything wrong with the heat?

13 A There was nothing wrong with the heat. Also had a
14 complaint about the jacuzzi itself. There was nothing wrong
15 with it.

16 Q Okay. Could you hear any noise going on in the room
17 when they called?

18 A Well, Nathaniel Jackson was the one on the phone,
19 and I can hear a female's voice in the background giggling
20 and stuff.

21 Q Okay. Now, what about check-out? What's normal
22 check-out?

23 A Check-out is 11 in the morning.

1 Q And did this party check out at the normal time?

2 A No, they didn't.

3 Q What happened?

4 A I do believe they had to stay over just a little.

5 They asked me on the phone that morning if it would be all

6 right. I said -- I can't remember much more. I don't

7 remember if I asked 'em if they could pay to stay extra an

8 hour or not. I don't remember.

9 Q Okay. Now after, did there come a time when they
10 left the room?

11 A Yes, they did.

12 Q And after they left, did you have occasion to go
13 back inside that room to clean up?

14 A That's correct.

15 Q And was anything left behind?

16 A Yes.

17 Q What was left behind?

18 A What was left behind was a pair of thong underwear,
19 they were red in color.

20 Q Red thong underwear?

21 A Yes.

22 Q And this pair of red thong underwear, had it been in
23 the room before they occupied it?

1 A No.

2 Q Who had cleaned that room before they occupied it?

3 A That would be me.

4 Q Okay. Now, did there come a time when the Howland
5 Township Police Department talked to you about the case?

6 A Yes, they did.

7 Q Okay. Did they show you any photographs?

8 A They showed me, the only pictures I was showed were
9 to identify the male.

10 Q The man?

11 A Uh-huh.

12 Q I'm gonna hand you what's been marked for
13 identification as State's Exhibit 313 and ask if you can
14 recognize that photographic array.

15 A Yes. I recognize it.

16 Q Okay. How do you recognize it?

17 A He's the same, he was like what I described. He's
18 thinner, he's dark, and there was a feature on his face that,
19 like a mole or I don't know what it was.

20 Q But you, oh, you picked -- well, did you sign that
21 array?

22 A That's my signature, yes.

23 Q Okay. And did you identify anybody in that

1 photographic array?

2 A Yes, I did. I identified picture number six.

3 Q Okay. And who was that person?

4 A They never told me if I got it right or not. It's
5 supposed to be Nathaniel Jackson.

6 Q Well, is that the person who rented the room, one of
7 the two people?

8 A That is the male that rented the room.

9 Q Okay. Let me ask you this. The woman who was with
10 this man that rented the room, the woman who had come in a
11 couple days before to check out the room, do you, would you
12 recognize her if you saw her again?

13 A I don't know if I would recognize her. I haven't
14 seen her face since then.

15 Q Okay. Well, can you look around the courtroom today
16 and tell me if you see her here?

17 A I, like I said, I wouldn't, I haven't seen her face
18 since then.

19 Q Okay. But at that time, this woman, you said, had
20 red hair, reddish brown hair?

21 A She had red hair at the time.

22 Q Red hair? And she was short?

23 A And she was short.

1 Q And she was a white female?

2 A She was white.

3 Q Okay. And do you remember what her build was at
4 that time?

5 A At the time?

6 Q Right. At that time. About 17 months ago.

7 A At the time, she, like I said, she was short,
8 shorter than me, I'm six foot tall, which 5'2" is pretty
9 average of the females I've met in my life. My sister is the
10 same height. So she seems about that height. She seems
11 thinner than my sister, who weighs 135.

12 Q So, at that time, this woman seemed thinner than
13 your sister, who is 135 pounds?

14 A Yes.

15 Q At that time?

16 A Yes.

17 Q Seventeen months ago?

18 A Yes.

19 MR. BAILEY: Okay. Thank you very much.
20 I'm done with my questions. Now defense counsel will get an
21 opportunity to ask you some.

22 THE COURT: Care to cross?

23 MR. INGRAM: Thank you, Your Honor.

1 (Note: For further proceedings in this matter, please refer
2 to Volume XXV.)
3

4 REPORTER'S CERTIFICATE

5
6 This is to certify the foregoing represents a true and
7 correct copy of the proceedings had in the aforementioned
8 cause as reflected by the stenotype notes taken by me on the
9 same.
10

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Lori J. Rittwage, RPR
Official Court Reporter

1 IN THE COURT OF COMMON PLEAS

2 TRUMBULL COUNTY, OHIO

3 STATE OF OHIO,
4 Plaintiff

) Case No. 01-CR-793

) Appeal No. 03-T-56

)

5 -vs-

) Judge John M. Stuard

)

6 DONNA M. ROBERTS,
7 Defendant

) **TRANSCRIPT OF PROCEEDINGS**

) **VOLUME XXV**

8 Jury Trial proceedings on Wednesday, May 14, 2003 and
9 Thursday, May 15, 2003

10 BEFORE: HONORABLE JOHN M. STUARD

11 AT: Trumbull County Court of Common Pleas
12 Courtroom Number 2
13 161 High Street, NW
14 Warren, Ohio 44481

15 APPEARANCES:

16 On behalf of the State of Ohio:

17 Messrs. Ken Bailey & Christopher Becker
18 Assistant Prosecuting Attorneys
19 Warren, Ohio

20 On behalf of the Defendant:

21 Messrs. John Juhasz & Gerald Ingram
22 Attorneys at Law
23 Youngstown, Ohio

Official Court Reporter: Lori J. Rittwage

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1 WEDNESDAY, MAY 14, 2003 (CONTINUED)

2 CROSS EXAMINATION OF JOSE FLORES

3 BY MR. INGRAM:

4 Q Good afternoon, Mr. Flores.

5 A Good afternoon.

6 Q I'm gonna ask you some questions, but when I ask you
7 some questions, I'm gonna stand back there so that you have
8 to talk to me and I have to hear your answers; okay?

9 A Okay.

10 Q But before I go back there, I have to see 312. Can
11 I borrow this?

12 A Go ahead.

13 Q I'm gonna give this back to you and then I'm gonna
14 go back there. When I ask you to look at 312, this is what
15 I'm talking about; fair enough?

16 A Fair.

17 Q Okay. I have to be able to hear you all the way
18 back here.

19 A Okay.

20 Q When you were talking with Mr. Bailey, he asked you
21 what you remembered about December 9th. Do you recall that
22 question?

23 A Yes.

1 Q And you told him that all you, you told him that all
2 you remembered were the names Nate Jackson and Donna Roberts?

3 A I remember what I had to about the two individuals.

4 Q Well, when you told Mr. Bailey that you remembered
5 Nate Jackson and Donna Roberts, where did those names come
6 from?

7 A The Nathaniel Jackson name came from the card.

8 Q That's State's Exhibit 312, that little card in
9 front of you; is that right?

10 A That's correct. The name --

11 Q Where did the name Donna Roberts come from?

12 A The name Donna came from me from her first visit.
13 The name Roberts, I didn't have no clue.

14 Q Well, you said the name Donna Roberts when you were
15 talking to Mr. Bailey. You couldn't say the name Roberts if
16 you had no clue. Where, pray tell, did the clue come from?

17 A The clue came from the police.

18 Q The clue came from the police?

19 A Yeah. They gave me the names of the individuals.

20 Q So you talked to the police on December 18th?

21 A (No response.)

22 MR. INGRAM: May I approach?

23 Q (By Mr. Ingram) You want to look at that document,

1 please?

2 A (Witness complies.) I read over the highlighted
3 part.

4 Q Well, why don't you read the whole thing?

5 A "While working at the desk at the Wagon Wheel
6 Motel."

7 Q No. Read it to yourself, please.

8 A Okay.

9 Q You know what? I'll withdraw that. Do you see at
10 the bottom of that document there's a date?

11 A Yes.

12 Q Is the date December 18th of 2001?

13 A Yes.

14 Q And is that the date that the police clued you in on
15 the name Roberts?

16 A I don't believe that's the day they told me the
17 names of any individuals except, other than Nathaniel
18 Jackson.

19 Q Well, when would they have clued you in on the name
20 Roberts?

21 A I believe I asked the name during a phone
22 conversation.

23 Q With who?

1 A Sergeant Dillon.

2 Q That would have been back in December of 2001, that
3 phone conversation?

4 A That would have to be in December, after the 18th.

5 Q After the 18th, but in, it was back in December of
6 2001?

7 A Yes.

8 Q And you're telling us today that you remembered
9 Roberts all the way back from December of 2001?

10 A The last name Roberts?

11 Q Yeah.

12 A Attached to the name Donna?

13 Q Yes.

14 A Yes.

15 Q Did you tell Mr. Bailey that Donna Roberts came in
16 to the Wagon Wheel on the 6th --

17 A She came --

18 Q -- to reserve a room?

19 A That's what I said.

20 Q How do you reserve a room, sir?

21 A To reserve a room, you need to put down a deposit.

22 Q All right. You got to reach in your pocket, and I
23 don't have much money, but you got to reach in your pocket

1 and you got to put money down on the desk?

2 A That's correct. And I have to take it, just a
3 deposit.

4 Q Did you take any money on the 6th?

5 A That, I can't remember.

6 Q Well, why don't you look at State's Exhibit 312 and
7 see if that's for the full amount of the room? No, no, no.
8 The little cards. Your receipt. State's Exhibit 312.

9 A Oh, okay. 312. What was your question?

10 Q This is the receipt that you gave Nate Jackson for
11 the room on December 9th?

12 A That's the receipt I had him fill out.

13 Q And is that the time that the room was paid for?

14 A Yes.

15 Q So the room was not reserved on the 6th, was it,
16 because there's no deposit put down on the 6th?

17 A There's no deposit on there.

18 Q So you took no money from a Donna on December 6th;
19 correct?

20 A I believe I took money for the room. I don't take
21 money in the full amount in most cases.

22 Q Well, what is the date on State's Exhibit 312?

23 A It was filled out, it's dated 12-9, but there's a

1 signature and a date of 12-6. That's a signature of my
2 employer. She signs it when she takes the money.

3 Q Well, how much money did you take on the 9th?

4 A Usually, if I don't take a full amount, I'll take
5 half of the amount as a deposit.

6 Q Well, does that show that you took the full amount
7 on the 9th?

8 A On the 9th would be the date I take the full amount.

9 Q The person who came in on the 9th, did he have
10 identification?

11 A He had no form of ID on him.

12 Q But he gave you his name as Nate Jackson?

13 A He didn't give me his name. He wrote it down on the
14 card. He wrote the --

15 Q He wrote his name on the card; is that what you're
16 saying?

17 A He had to have.

18 Q Okay. He wrote the name --

19 A I don't remember.

20 Q Does the card bear the name Nate Jackson?

21 A Yes.

22 Q He wrote that name on the card or you wrote that
23 name on the card, but one of you did; correct?

1 A It's not my handwriting, sir. I did not write that.

2 Q Was there a third person when Nate Jackson was
3 there?

4 A I'm starting to remember some things. The room, it
5 said the date, 12-9. Was it him that filled out the card or
6 was it her that filled out the card? Which one was it?

7 Q Mr. Flores --

8 A It was Nathaniel Jackson that filled out the card.
9 I was trying not to get them confused with another couple
10 where the lady filled in her husband's name.

11 Q Nathaniel Jackson filled out the card and gave you
12 the name Nathaniel Jackson?

13 A Correct.

14 Q In your statement to the police, are you now saying
15 that maybe on December 6th, someone else took money from this
16 Donna woman?

17 A There's no way.

18 Q There's nobody; right?

19 A I'm the only person at the desk.

20 Q Well, in your statement to the police on December
21 18th, you don't say anything in there about the woman giving
22 you money on December 6th, do you?

23 A No, I did not put that down. I did not say anything

1 about it.

2 Q Well, didn't you say, "She asked me if the room
3 would be available and I told her unless she put down a
4 deposit, she'd have to come early."

5 A Or else the room might not be there. That's
6 correct.

7 Q Okay. So you didn't get a deposit on the 6th;
8 correct?

9 A (No response.)

10 Q Oh, forget it. It doesn't matter. But the room is
11 not ready; correct?

12 A The room wasn't ready.

13 Q So they, these people wait outside in the parking
14 lot?

15 A That's right. They waited outside in the parking
16 lot.

17 Q And they sit in the car?

18 A They sat in the car.

19 Q And they listened to music?

20 A That's correct.

21 Q They're not sitting in this car kissing and hugging
22 each other, acting inappropriately? They're just sitting
23 there listening to music?

1 A I've told you as far as I can remember.

2 Q As far as you can remember, they were sitting there
3 listening to music; isn't that right?

4 A That's correct.

5 MR. INGRAM: Thank you.

6 THE COURT: Any redirect?

7 MR. BAILEY: Oh, yes. Are you done?

8 MR. INGRAM: I'm done.

9 MR. BAILEY: Okay. Thanks.

10 REDIRECT EXAMINATION

11 BY MR. BAILEY:

12 Q Mr. Flores, State's Exhibit Number, what is this,
13 312, this guest registration card, on the bottom right, there
14 is some initials and the date; right?

15 A Correct.

16 Q Okay. Who's Mazi Rahman?

17 A Mazi Rahman is the owner of the motel.

18 Q Okay. And who is, are you familiar with the
19 initials that are at the bottom right of that card?

20 A Yes.

21 Q Whose initials are those? Well, whose signature is
22 that?

23 A That signature is Mazi Rahman.

1 Q You familiar with his writing?

2 A Yes.

3 Q Okay. And that date, that's also written with the
4 same ink, thick ink?

5 A Yes. That's the same pen.

6 Q Okay. And Mazi Rahman, he would be your boss?

7 A That's correct.

8 Q And when, when does he sign the bottom of the guest
9 register?

10 MR. JUHASZ: Objection.

11 THE COURT: Objection?

12 MR. JUHASZ: Uh-huh.

13 THE COURT: What's your objection?

14 MR. JUHASZ: There's no foundation that he
15 would know. How would he know?

16 THE COURT: I don't know that I
17 understand. No foundation for what?

18 MR. JUHASZ: That the witness saw when the
19 other fellow signed it.

20 THE COURT: Oh, oh, oh. Yeah. Okay.
21 That's sustained.

22 Q (By Mr. Bailey) Are you familiar with when, the
23 procedure in your business when your boss would sign the

1 bottom right corner?

2 A You have to sign it in front of me.

3 Q Okay. And if you were there at the time, what does
4 that mean?

5 A Of the signature?

6 Q Right.

7 A That means he filled it out. He cannot change any
8 of the dates. He cannot change how much money was given.

9 Q Okay. But does it --

10 A It means he can't short my drawer.

11 Q Your boss?

12 A That's right.

13 Q Okay. And that, do you know, were you present when
14 your boss signed and dated that guest register?

15 A Yes, I was present when he was there. He also took
16 the money for it.

17 Q Okay. And what date would that money have been
18 paid?

19 A The full amount would have been paid at a later
20 date. This only shows that he took the money on that date.

21 Q Okay. What money were you referring to?

22 A It must have been the money for the deposit.

23 There's no other way he would fill it out at a earlier date.

1 Q Okay. So on December 6th, at that time, how much
2 did you require for a deposit?

3 A I believe it would be \$50 like I did with most other
4 people who didn't have the full amount for a deposit.

5 Q Okay. And this room, then, would have, the deposit
6 would have been paid by -- how many people came in to check
7 on this room back on December 6th?

8 A Nobody else came to check up on this room, 101. It
9 was open for that day.

10 Q Okay. But on December 6th when Mazi Rahman would
11 have taken, when the deposit would have come in, who would
12 have paid that deposit?

13 A The only person that came in, that would have to be
14 the name they gave me, Donna Roberts.

15 Q Well, let me put it this way.

16 A The female.

17 Q You didn't know her name at that time, did you?

18 A No, I didn't. The female with red hair.

19 Q Okay. The female with the red hair?

20 A And I'm not gonna forget a female with red hair
21 since red hair is my favorite hair color. My fiancée has got
22 red hair herself.

23 Q Okay. And did she give you any name at all that you

1 remember?

2 A I, for some reason, I'm remembering what took place
3 on the 6th. Before, I could not remember. And every day I
4 would think is there anything I can remember, and until this
5 card was shown to me again because I haven't seen it for
6 awhile, something is coming back. And I had a little
7 conversation because we went and I showed her the room. And
8 as people do, people talk. And I do believe I asked for her
9 name. She said Donna. I said that, I said, you know, there
10 was a Donna that used to work here before I did. I remember
11 that conversation now.

12 Q Okay. So you can remember the name? She gave you
13 the name Donna, right, but you don't remember, this name
14 Roberts, you don't know anything about Roberts; right?

15 A No.

16 Q You believe that sometime after you gave a statement
17 to the police, if I understand your response to Mr. Ingram,
18 the name Roberts came up from a police officer; right?

19 A Correct. I remember no name of Roberts.

20 Q Okay. But the name of this lady, all you know, the
21 only name she gave you was Donna?

22 A Donna.

23 Q Okay. You know before they occupied that room, you

1 got the full amount of the money in, whether part of it was a
2 deposit a couple days before, but the rest of it was
3 certainly paid before they were able to occupy the room?

4 A That's correct.

5 Q Okay. And no question, these two people occupied
6 the room; correct?

7 A Yes. They both walked into the room.

8 Q Okay. And they stayed there overnight?

9 A That's correct.

10 Q And you know that because they called you up to
11 complain about a couple of things?

12 A They called me during the, their stay, and their
13 vehicle was in the lot at late night.

14 Q Okay. This red or burgundy car?

15 A Right. And I'm there 24/7.

16 Q Okay. When somebody puts down the deposit, do they
17 have to, they just pay the balance of what's due on the room?
18 They don't have to put more money down and then get a deposit
19 back; right?

20 A No.

21 Q No. They just pay the balance of what's due on the
22 room?

23 A Right.

1 Q Okay. Okay. And then they stayed a little bit
2 late?

3 A That's correct.

4 Q Okay. And then sometime after that, the cops
5 contacted you, you picked out this guy's picture whose name
6 you --

7 MR. INGRAM: That's beyond the scope of
8 redirect, Your Honor.

9 MR. BAILEY: Okay. No further questions,
10 Your Honor.

11 THE COURT: Any recross?

12 MR. INGRAM: None.

13 THE COURT: You're excused, sir. Thank
14 you very much.

15 THE WITNESS: Thank you.

16 MR. BECKER: Can we approach? Well,
17 should we take our afternoon break is what I should ask?

18 THE COURT: We're going to take a
19 15-minute break, folks. You are not to discuss anything or
20 form any opinion until you return.

21 MR. BECKER: Thank you, Your Honor.

22 (Whereupon, a recess was had commencing at 2:59 p.m. and
23 concluding at 3:15 p.m.)

1 WHEREUPON,

2 CHRISTOPHER GEAR,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Would you please introduce yourself to the jury
8 here?

9 A My name is Christopher Gear. I live on the north
10 side of Youngstown.

11 Q And can you tell this Jury exactly what your address
12 is?

13 A 116 Victoria Street.

14 Q And how long have you lived there?

15 A About eleven years now.

16 Q Okay. And are you familiar with a street in
17 Youngstown called Wirt Street?

18 A Yes, sir.

19 Q How close to your home is Wirt Street?

20 A About three blocks.

21 Q I guess it's Wirt.

22 A Wirt. About three blocks.

23 Q All right. Mr. Gear, I want to direct your

1 attention to any particular habits you may have before you go
2 to bed at night. Do you have a routine that you engage in
3 before you go to bed at night?

4 A Yeah. Usually, I look out my front window out of my
5 sun room and check my vehicles, check the cars around to make
6 sure everything is all right.

7 Q And I want to specifically direct your attention to
8 Tuesday night, December 11th of 2001. When you went to bed
9 that night, did you notice anything unusual in your
10 neighborhood?

11 A Yeah. There was a car parked on Pershing in front
12 of an empty lot that, and usually there isn't any cars parked
13 out there.

14 Q Do you recall what color or what type of car it was?

15 A It was a Chrysler, a silver Chrysler.

16 Q And this vehicle that you saw out there, did you do
17 anything at that time on Tuesday, December 11th, before you
18 went to bed?

19 A No, sir, I didn't.

20 Q Do you recall approximately what time you went to
21 bed that evening?

22 A It was around midnight. It was after the 11:00
23 news. So somewhere around midnight.

1 Q Now, when you got up the next morning, which would
2 have been Wednesday, December 12th, 2001, did you observe
3 that vehicle?

4 A Yes. It was still there.

5 Q And then you went to work?

6 A Yes, sir.

7 Q Where do you work at?

8 A I work construction. So I was, it could have been
9 anywhere. I don't remember exactly where I was working that
10 day.

11 Q Nevertheless, while you were at work on that day,
12 did you hear somehow that there had been a homicide here in
13 Howland here in Trumbull County?

14 A Actually, sir, it was that evening. We heard it on
15 the news when I came home from work.

16 Q Okay. Now when you came home on Wednesday, December
17 12th, 2001, was that vehicle still on Pershing?

18 A Yes, sir.

19 Q And what's the relationship from your home to
20 Pershing, even though I understand you live on Victoria?

21 A Victoria Street T's into Pershing right there. I
22 live about two houses up from the corner so I can see it
23 clearly.

1 Q Now, when you came home and saw the news on
2 December 12th, 2001, or I'm sorry, on Wednesday, December
3 12th, 2001, and you heard there had been a homicide in
4 Trumbull County, Ohio, was there any type of vehicle that
5 they were on the lookout for?

6 A They just said they hadn't found the vehicle yet and
7 I thought it was kind of strange so my wife called the police
8 department and they came out to check it.

9 Q And at some point either before or after the police
10 were called, did you check and look at the license plate on
11 that vehicle?

12 A I did, sir. I checked to see what county it was
13 from. It was from Trumbull County.

14 Q And, in fact, did the police come and tow that
15 vehicle?

16 A Yes, sir, they did. About 20 minutes later, half
17 hour later.

18 Q And that was basically your involvement in this
19 case; correct?

20 A Yes, sir. That's all.

21 MR. BECKER: Okay. I have nothing
22 further, Your Honor.

23 THE COURT: Cross?

1 MR. INGRAM: No questions.

2 THE COURT: Sir, thank you very much.

3 THE WITNESS: Thank you.

4 MR. BECKER: Your Honor, at this time,
5 we've gone through eleven witnesses today and they went a
6 little quicker than we thought. And because it's such a
7 wonderful day, both sides have agreed to give the jury the
8 afternoon off and we'll see them here at 1:00 tomorrow since
9 the Court has criminal morning tomorrow if that's agreeable
10 with the Court.

11 THE COURT: Yes. That's fine. You have
12 no further witnesses for the day then?

13 MR. BECKER: We have nothing further
14 scheduled for today.

15 THE COURT: Okay. We have the criminal
16 morning starting at 9 tomorrow. We're usually done by noon
17 so we should be ready to proceed at 1:00. Mr. Bailey is the
18 prosecutor assigned to this court so if we aren't able to
19 start at 1:00, we can all blame him; okay?

20 MR. BAILEY: I'll get done fast, Your
21 Honor.

22 THE COURT: Okay. You're not to discuss
23 anything or form any opinion until you return. You've only

1 started to hear the evidence in this matter. You all have a
2 nice evening. Thank you very much.

3 MR. BECKER: Thank you.

4 MR. BAILEY: Thanks, Your Honor.

5 (At 3:05 p.m., the jury was excused and the following
6 proceedings occurred in open at 4:04 p.m. with the Court and
7 counsel present.)

8 THE COURT: On the record here. We are
9 back in the courtroom. The jury has left for the day, but
10 Juror Number Nine and Juror Number One have stayed and asked
11 to speak to the Court about a concern of theirs. I have
12 assembled counsel from both sides. The defendant has
13 already --

14 MR. INGRAM: We waive the presence of the
15 defendant.

16 THE COURT: Waive the presence of the
17 defendant.

18 Ladies, would you tell me on the record what your
19 problem is?

20 JUROR NO. 9: Our concern is going back to
21 work. We don't want to jeopardize anything we've done. We
22 both work at two different hospitals. Because of the
23 reporters and TV and all that stuff, people in that hospital

1 know what's going on. When I happened to go to the hospital
2 yesterday and started getting comments, I shut my door
3 because I don't want to hear the comments. I need to make my
4 own decision. How do we handle that? What do we do?

5 THE COURT: Let me ask one question. Are
6 you working during, you are talking about the days we are not
7 having court?

8 JUROR NO. 9: Correct. Like Friday and
9 Monday.

10 THE COURT: You are not working in the
11 evenings or anything?

12 JUROR NO. 1: I work midnights.

13 THE COURT: Even though you're here?

14 JUROR NO. 1: I don't work before I come
15 in here.

16 THE COURT: I understand. Let me ask you
17 this. Be very candid. If I ordered you to not go to work,
18 will you be paid by your employer if you had time missed?

19 JUROR NO. 1: I get paid for the days I'm
20 here so I would assume.

21 JUROR NO. 9: And for me, it doesn't
22 matter. I could take leave days at work. I just wanted an
23 okay that I shouldn't go to work and do that.

1 THE COURT: What we're talking about here
2 is a day and a half during the term of this trial and, quite
3 frankly, I don't want to order that if it's going to be a
4 financial burden on you.

5 JUROR NO. 1: Oh, I am not worried about
6 that.

7 JUROR NO. 9: No.

8 THE COURT: It would not be --

9 JUROR NO. 9: Uh-huh.

10 THE COURT: Let me, this apparently is
11 very much of a concern to both of you or you wouldn't have
12 come back.

13 JUROR NO. 1: It is, because two of the
14 people that were in the jury pool were nurses on my floor.

15 THE COURT: Okay.

16 JUROR NO. 1: And they both got dismissed
17 so they know what's going on and it has spread throughout the
18 hospital. So everywhere you go, you get the same remarks and
19 questions and --

20 THE COURT: Yeah. Probably some of it is
21 people trying to be what they think is cute and it isn't.

22 JUROR NO. 9: Right. Right.

23 JUROR NO. 1: Yeah.

1 THE COURT: Okay. Then for the record, I
2 am ordering both of you that you are not to go to work
3 because of the contact that is being forced upon you.

4 Off the record.

5 (Whereupon, a discussion was had off the record.)

6 MR. INGRAM: I think we are obligated to
7 ask a few questions.

8 MR. BECKER: I think we are obligated to
9 ask a few questions for the record. Mr. Ingram, go ahead and
10 ask them.

11 MR. INGRAM: Ladies, thank you very much
12 first off. Miss Gray, I'll start with you.

13 JUROR NO. 1: Okay.

14 MR. INGRAM: My memory is not what it used
15 to be. Who were the two nurses that are no longer involved?

16 JUROR NO. 1: Diane Park is an LPN on
17 midnights on my floor and Gina Day, Regina Day, is an LPN on
18 day shift.

19 MR. INGRAM: Has any, has either of them
20 or anyone else at work said anything to you about this case?

21 JUROR NO. 1: Well, whenever I see any of
22 'em, it's immediately, you know, "How's it going? What's
23 happening?"

1 And I just have to back away and say, you know, "I
2 can't talk about it."

3 MR. INGRAM: So they ask you questions
4 about what's going on here. Do they tell you about what they
5 read in the newspaper or about what they hear?

6 JUROR NO. 1: I have not had that yet.

7 MR. INGRAM: Okay.

8 JUROR NO. 1: But I get remarks like, you
9 know, I can't even think of what the remarks were, but
10 everybody, people make remarks about being in court, being on
11 a jury, you know, "What are you doing there? Oh, you poor
12 thing."

13 Well, I don't particularly see it that way.

14 MR. INGRAM: Either do any of us. And
15 those remarks are all generic, sort of, to the extent that
16 they would apply to jury service in any case.

17 JUROR NO. 1: Uh-huh.

18 MR. INGRAM: Has anyone at work made
19 case-specific remarks to you?

20 JUROR NO. 1: Not yet.

21 MR. INGRAM: Not yet.

22 Mrs. Kay, what's happening with you at work?

23 JUROR NO. 9: It's the same thing. I

1 went in yesterday and I went in this morning and I have four
2 employees there that were making those same generic comments.
3 You know. "How is the jury going?"

4 And I told them, "I don't want to talk about this,"
5 and I can go in and shut the door. That's what I did. We
6 didn't have that problem.

7 Today, I went back this morning to do some office
8 work and they didn't mention it because I point blank made
9 that distinct point that I don't want to talk about it at
10 all. My problem being is that if I go back to work, I go
11 from floor to floor and I can't shut them out.

12 MR. INGRAM: Okay. I want the record to
13 be clear. So with you as well, people are asking you about
14 your experiences here. They're not giving you information --

15 JUROR NO. 9: Right.

16 MR. INGRAM: -- that they've read in the
17 newspaper?

18 JUROR NO. 9: I have heard nothing about
19 the paper, the TV, nothing.

20 MR. INGRAM: This last question is to both
21 of you. Has anything occurred that you think would hinder, I
22 know the answer to this question, but it's for the record,
23 has anything occurred that you believe would hinder or affect

1 your ability to give each side a fair shake here?

2 JUROR NO. 9: No. That's what I want to
3 make sure and clear that doesn't happen. That's why we
4 brought this concern up.

5 THE COURT: Ladies, we all thank you very
6 much.

7 MR. BECKER: Thank you very much.

8 (At 4:11 p.m., court was adjourned to Thursday, May 15,
9 2003.)

10 * * *

1 THURSDAY, MAY 15, 2003 AT 1:05 P.M.

2 MR. JUHASZ: We had discussed yesterday
3 after court about the admonition. Both Mr. Becker and I have
4 brought an admonition. They're virtually the same. They're
5 out of O.J.I. so we'll offer those to the Court and ask the
6 Court to -- Mr. Becker has highlighted the portions.

7 THE COURT: May I see those, please?

8 MR. BECKER: You can have them.

9 THE COURT: Thank you.

10 MR. BECKER: I don't know if you want to
11 reiterate the first portion there again because of the
12 discussions we had in chambers off the record yesterday and
13 then just from here on out use the abbreviated --

14 MR. JUHASZ: The short form.

15 MR. BECKER: The abbreviated short form
16 admonition.

17 THE COURT: Well, this one says it's
18 important to be fair and attentive. Of course I've told
19 them, what I usually tell them is, "You are not to discuss
20 this case among yourselves or with anyone else or form any
21 opinion."

22 I don't know which one of these you submitted,
23 but --

1 MR. BECKER: Well, I don't know if you
2 want to read, because of the concerns that defense counsel
3 raise, and I think it was off the record yesterday in
4 chambers after the proceedings, I highlighted the first, the
5 one that basically says don't form an opinion one first and I
6 don't know if you want to just reiterate that one time for
7 them at the break today and then go back to just using the
8 second admonition, the short form from here on out.

9 THE COURT: Okay. Just remind you of the
10 admonition.

11 MR. JUHASZ: Yeah. That's fine with us.

12 THE COURT: Fair enough. No problem.

13 MR. JUHASZ: The second thing, Your Honor,
14 is if the Court will recall yesterday when the State Farm
15 insurance agent, Kathy Thomas, testified, she was asked some
16 questions by Mr. Ingram on cross examination about who was
17 listed as the principle driver on the two vehicles leased by
18 the Fingerhuts. Mr. Ingram asked her if she'd be kind enough
19 to call and provide that information. While we were still in
20 court yesterday, Laurie came in and handed me the slip that
21 she had called back. And in my usual fashion, I forget to
22 tell everybody, including my own co-counsel, until last
23 night, I brought it to the attention of the prosecutors this

1 morning and we are all agreed and have signed a stipulation
2 that Donna Roberts was the primary driver listed on the
3 silver mist Chrysler, the 2001 model, and Robert Fingerhut on
4 the 2000 inferno red Chrysler 300M.

5 THE COURT: Well, it would be appropriate
6 for one side or the other to state that to the jury.

7 MR. BAILEY: We have no problem with
8 Mr. Juhasz stating that, reading that in, the stipulation.

9 THE COURT: Okay. We'll do that right up
10 front then.

11 MR. JUHASZ: That will be fine.

12 MR. BAILEY: And then there's a third
13 issue with a juror.

14 MR. INGRAM: I don't know of an issue with
15 a juror.

16 MR. BAILEY: I thought you had something
17 yesterday that was brought to our attention that --

18 MR. BECKER: Didn't one of you just
19 mention something about one of the jurors?

20 MR. JUHASZ: Did you not mention
21 yesterday, at the end of court yesterday something about one
22 of the jurors having difficulty with getting paid?

23 THE COURT: Yeah. Juror Number 11.

1 MR. JUHASZ: I don't know if you want to
2 look into that.

3 THE COURT: Well, we should voir dire her
4 individually.

5 MR. JUHASZ: I suggest we just leave it
6 alone.

7 THE COURT: Well, I'll take a consensus of
8 opinion on this because she has raised it with only Connie.
9 She's not said, "I'd like the Judge to know about it," or
10 whatever.

11 I take from that that she does not think that it's
12 all that big a deal, but one side or the other may find that
13 if that's something that's going to be quite bothersome for
14 her that you might wish to inquire into it. I don't know. I
15 kind of agree with Gerry. But on the other side of the coin,
16 you folks have to decide what you want to do on that. I take
17 no position at this point.

18 MR. BAILEY: Well, our feeling is we
19 probably don't really care, except for the fact that the
20 defense might have a concern that she may be rushing her
21 deliberations if she's not getting paid. So they may, I
22 don't know, it might behoove --

23 MR. INGRAM: May I have a moment with

1 Mr. Juhasz, please?

2 (Whereupon, a discussion was had off the record.)

3 MR. BECKER: I'm just going to put on for
4 the record that Connie is the jury commissioner.

5 THE COURT: I would point out that that's
6 only one out of twelve. I think that any tendency could be,
7 would blocked by the others. You know.

8 MR. JUHASZ: Your Honor, for the record,
9 the position of the defense mirrors what you've just said,
10 which is that she hasn't, it's obviously not such a concern
11 to her that she's asked to have it brought to the attention
12 of the Court.

13 THE COURT: Right.

14 MR. JUHASZ: Also, I think that the trial
15 may conclude a little quicker than maybe we originally
16 thought so it may not end up being as big of a problem as we
17 original thought.

18 THE COURT: Okay.

19 MR. JUHASZ: Obviously, if she brings it
20 to somebody's attention, it's a bigger issue. But for now, I
21 think we should leave it alone.

22 THE COURT: Would the State agree with
23 that or not?

1 MR. BAILEY: Yeah. That's fine with us,
2 Judge.

3 THE COURT: Okay. For the time being. If
4 she should officially bring it to my attention, I will notify
5 you.

6 MR. INGRAM: I only have one other thing,
7 and it's only to clarify the record so that later on we don't
8 get confused. There has been an agreement between the
9 parties that the parties would separate their witnesses, and
10 the witnesses have been separated, but that agreement was not
11 previously stated on the record.

12 THE COURT: Yeah. It was not. Okay.
13 Both sides are instructed, then, that you're responsible for
14 any witness who is going to testify, and once they've
15 testified, if you have any expectation of calling them back,
16 make sure they leave the room. Okay?

17 Your motion is of exclusion, not separation, because
18 separation technically is to keep any possible witnesses
19 separated, but to exclude them from the courtroom during the
20 testimony?

21 MR. INGRAM: Yes.

22 THE COURT: Okay.

23 (Whereupon, the jury was escorted into the courtroom at 1:18

1 p.m. and the following proceedings occurred in open court.)

2 THE COURT: Good afternoon, folks. We are
3 going to continue with the evidence presented by the State at
4 this time. Is the State ready to call your next witness?

5 MR. BECKER: Yes, sir, Your Honor.

6 Your Honor, the State would call Jeff Diamantes.

7 **WHEREUPON,**

8 **JEFF DIAMANTES,**

9 having been first duly sworn, according to law, was examined
10 and testified as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. BECKER:**

13 Q Would you please introduce yourself to this jury?

14 A Jeffrey Paul Diamantes.

15 Q And Mr. Diamantes, where is it that you work at
16 currently?

17 A Gorant Candies.

18 Q Now, I want to direct your attention to about 18
19 months ago, December of 2001. Where did you work in December
20 of 2001?

21 A At a Days Inn.

22 Q And where was that Days Inn located at?

23 A On Market Street in Boardman.

1 Q Do you recall how long you were working or had been
2 working there in December of 2001?

3 A I worked there and the Super 8, it was the same
4 owners, about maybe a year.

5 Q Now, I want to ask you about some specific things
6 that happened in December of 2001.

7 First of all, what were your job duties with the
8 Days Inn there?

9 A I was a night auditor/desk clerk.

10 Q And what does the night auditor/desk clerk do?

11 A We check in, check out people, answer the phone and
12 do the night audit on the computer.

13 Q Now, I want to direct your specific attention to
14 December 11, 2001, which was a Tuesday I believe. Do you
15 recall renting a room to a person for one week?

16 A Yes.

17 Q Why would the period of one week stand out in your
18 mind?

19 A Mainly because construction workers mainly did,
20 they'd come in to get their room for like a week if they're
21 doing work in the area.

22 Q So it would be unusual, unless it was a construction
23 worker, that someone would rent a room that long?

1 A Correct.

2 Q Do you recall whether this person who rented the
3 room was a man or a woman?

4 A A woman.

5 Q Can you describe, as best you recall, the physical
6 appearance of this woman?

7 A Short, medium build, dark hair, forties.

8 Q And when you say short, how short do you mean?

9 A 5'2".

10 Q Okay. Now, I want you to tell us in your own words
11 what happened when this woman got the room.

12 Well, first of all, was she by herself?

13 A Yes.

14 Q Do you recall what type of vehicle that she was in?

15 A Yes.

16 Q Did she, do you recall how, the method that she used
17 to pay for the room?

18 A Credit card.

19 Q Okay. And when someone rents a room or was rented a
20 room at the Days Inn in Boardman then, how would they go
21 about or how would you go about conducting business with that
22 credit card?

23 A First, you got to give 'em a folio, they have to

1 fill it out with their name and you check their license to
2 make sure that the name matched up the credit card.

3 Q All right. And did you do all of that with this
4 woman?

5 A Yes.

6 Q And you did, in fact, check this woman's
7 identification; is that correct?

8 A Yes.

9 Q And approximately how long did it take you to set
10 this woman up with the room?

11 A Maybe, no longer than ten minutes.

12 Q Do you recall what this woman was doing when you
13 were checking her in to the room at the Days Inn?

14 A Just pacing around the lobby.

15 Q Now, I want to ask you, do you recall approximately
16 what time this woman came in to rent this room? Was it
17 morning, afternoon, evening, night?

18 A It was between, I think, 9 p.m. and 12 p.m.

19 Q All right. So it was late in the evening?

20 A Yes.

21 Q Now, I want to show you some items that have been
22 marked for purpose of identification here as State's Exhibits
23 311-A and B. First, I'm gonna hand you these. I want you to

1 look at them. Don't say anything, but just look at those.

2 A (Witness complies.)

3 Q Have you had a chance to look at those?

4 A Yes.

5 Q All right. Now, I'm gonna hand you this device. Do
6 you see that?

7 A Yeah.

8 Q I'm gonna put up on the screen State's Exhibit 311
9 and ask if you recognize what exhibit, what Exhibit 311 is?

10 A That is a folio that the customer fills out when
11 they rent a room.

12 Q And I'm sorry. What did you refer to that as?

13 A A folio.

14 Q All right. And is this like a carbon copy? Is that
15 another way of saying it?

16 A Yes.

17 Q All right. The original that someone writes on goes
18 through and leaves the impressions on here?

19 A Yes.

20 Q Is that correct? All right.

21 And at the very top, it says name. Did you write
22 that down or did the person renting the room?

23 A The person renting the room.

1 Q And the next line, it says address, and it says 254
2 Fonderlac. Who would have filled that information out?

3 A The person that rented the room.

4 Q All right. Is anywhere on that document the
5 signature of you or anything that you would have written?

6 A Just on the right, the right side.

7 Q Okay. And that would have been the rate and the
8 date and the date out, is that correct, that information?

9 A Correct.

10 Q If you're having trouble seeing, by all means, you
11 can step down off the witness stand.

12 A That's okay.

13 Q Okay. You can see that okay?

14 A Yeah.

15 Q All right. And then there are the days occupied,
16 and that's checked out. Who would have checked that out?

17 A Me.

18 Q And are, there's also some listing of the amount,
19 the tax, the county tax, the sales tax, and then the total
20 amount for the room is that information. Would you have
21 filled that out?

22 A Yes.

23 Q So on that line that's about say a quarter of the

1 way over on the right, all of that information from that
2 vertical line was filled out by yourself?

3 A Correct.

4 Q And all the information on the left-hand side was
5 filled out by yourself?

6 A On the right-hand side?

7 Q I'm sorry. The left-hand side was filled out by the
8 person that rented that room?

9 A Correct.

10 Q All right. Is that a fair and accurate copy of the,
11 and I forget, what did you refer to that as?

12 A Folio.

13 Q Folio. Is that a fair and accurate copy or would
14 that be the carbon copy that was made at the time that room
15 was rented?

16 A Is that the yellow one or the white one?

17 Q It's the yellow one.

18 A That would be the carbon copy.

19 Q And that's the one you just saw up there?

20 A Yes.

21 Q Okay. And the number of persons in that room, do
22 you see how many that was?

23 A One.

1 Q And that also indicates credit card and there's a
2 signature there at the signature line; correct?

3 A Correct.

4 Q Now, I'm gonna show you State's Exhibit 311-B, as in
5 boy, and I don't know if you can see that. Okay. All right.
6 What is State's Exhibit 311-B, which is one of the pieces of
7 paper I just handed you a few moments ago?

8 A That is a credit card receipt.

9 Q And how do you go about getting the credit card
10 receipt?

11 A You just swipe the credit card through the machine
12 and it prints out the receipt.

13 Q And the original, which is I guess the white copy,
14 is that given to the customer?

15 A Yes.

16 Q And they sign that?

17 A Yes.

18 Q And you guys keep that for your records?

19 A We keep one, yes.

20 Q And this is the one you keep?

21 A Yes.

22 Q Does that look like a fair and accurate or is that
23 the, rather, the copy that was kept by you?

1 A Yes.

2 Q Now, do you recognize the woman who filled out the
3 forms there and came and got that room on Tuesday,
4 December 11th, 2001 here in the courtroom?

5 A Yes.

6 Q Could you please identify her?

7 A She's right there with the turquoise shirt.

8 MR. BECKER: All right. Please allow the
9 record to reflect that the witness has identified the
10 defendant, Donna Roberts.

11 THE COURT: The record will so reflect.

12 Q (By Mr. Becker) Now, I'm going to come back up here
13 only because we're having a little bit of trouble there.

14 What time is indicated on State's Exhibit 311-B, the
15 receipt there?

16 A 11:33 p.m.

17 Q All right. Now you wouldn't know anything about
18 whether that clocking device or that timing device was off or
19 correct, would you?

20 A I was told it was off by one of the guys that worked
21 there. I'm not sure by how much though.

22 MR. INGRAM: Objection.

23 THE COURT: What's your objection?

1 MR. INGRAM: Hearsay. "I was told by."

2 MR. BECKER: Without telling us --

3 THE COURT: I sustain the objection.

4 MR. BECKER: Yeah.

5 Q (By Mr. Becker) Without telling us if anyone told
6 you, were you -- strike that.

7 Well, we'll get into that later on. All right.

8 Do you remember what room was rented to this woman?

9 A 129.

10 Q All right. And the room was for approximately how
11 long?

12 A A week.

13 Q Okay. Without telling us how you, without telling
14 us if someone else told you, mentioning someone else, were
15 you aware that the clock was off on that credit card machine?

16 A No.

17 Q All right. Later on, did you discover that it was?

18 A Yes.

19 MR. INGRAM: Oh, I move to strike. This
20 is an improper question. He should know better.

21 THE COURT: Okay.

22 MR. INGRAM: That was Mr. Bailey's idea.

23 THE COURT: Just approach for a minute

1 here.

2 MR. BECKER: Your Honor, I'll --

3 THE COURT: Well, you're able to do it,
4 ask the question, if you lay the foundation.

5 MR. BECKER: Well, let me do this. Let me
6 withdraw that question and we'll present, later on, testimony
7 on that.

8 THE COURT: Okay.

9 MR. BECKER: I have no further questions
10 of this witness.

11 THE COURT: Very good. Cross.

12 CROSS EXAMINATION

13 BY MR. INGRAM.

14 Q Afternoon, sir. This room is rented for a week,
15 Monday through Tuesday or Tuesday through Monday?

16 A It was rented on Monday through I believe Sunday or
17 was it Tuesday through Monday?

18 Q Well, why don't you look at the right-hand column of
19 311-B. Isn't that the document that shows?

20 A Correct.

21 Q What is it, Tuesday through Monday?

22 A Tuesday through Monday.

23 Q And when the woman who rented the room presented

1 herself, did she offer you cash if you, as an incentive not
2 to require identification?

3 A No.

4 Q When you asked for identification, was she hesitant?

5 A No.

6 Q You did check identification; correct?

7 A Yes.

8 Q And then you checked if the driver's license matched
9 with the credit card?

10 A Correct.

11 Q I live in Boardman down the street. And if my
12 brothers were to visit me over the 4th of July weekend and I
13 had a graduation party and they wanted a room for a week,
14 would you rent them a room for a week?

15 A Of course.

16 MR. INGRAM: Thank you. No further
17 questions.

18 MR. BECKER: We have nothing further, Your
19 Honor.

20 THE COURT: Thank you, sir. You're
21 excused.

22 MR. BECKER: The State would call Jennifer
23 Robinson.

1 WHEREUPON,

2 JENNIFER ROBINSON,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BECKER:

7 Q Would you please introduce yourself to this jury,
8 please?

9 A My name is Jennifer Robinson.

10 Q All right. And Miss Robinson, where do you work at?

11 A The Days Inn Motel.

12 Q And where is that Days Inn Motel located at?

13 A On Market Street.

14 Q Market Street where?

15 A South of the mall.

16 Q Of which mall?

17 A Southern Park.

18 Q That's down near Youngstown or Boardman?

19 A Boardman.

20 Q All right. Now, Miss Robinson, what do you do for
21 the Days Inn at Boardman?

22 A I'm a housekeeper.

23 Q And how long have you been employed there?

1 A About eight years.

2 Q Can you just tell this jury what your general duties
3 are regarding the housekeeping at the Days Inn in Boardman?

4 A Go out to the rooms and clean 'em, strip out all the
5 beds, empty all the trash, check all the drawers and
6 everything.

7 Q And is that done after a person checks out or when
8 is that done?

9 A It's done after they check out.

10 Q What type of cleaning regimen do you engage in if
11 the person is staying over for an additional day or two or
12 three?

13 A Pretty much the same thing. Just we don't go in the
14 drawers and stuff and we avoid their personal items that's
15 left in the room.

16 Q All right. I want to direct your attention to about
17 a year and a half ago. I believe some detectives from the
18 Howland Police Department came to speak to you?

19 A Yes.

20 Q And do you remember why they came to speak to you?

21 A Yes. They were asking about people that stayed in
22 one of our rooms.

23 Q Do you remember what room number they were asking

1 about?

2 A 129.

3 Q Now, were you able to tell them about cleaning
4 during the week of December 11th? Actually, it would have
5 been December 10th, it would have been that Monday, but
6 Tuesday, December 11th; Wednesday, December 12th; the 13th;
7 14th; 15th; did you recall the routine or what was going on
8 with room 129 and your cleaning of that room?

9 A For Thursday and Friday and Saturday, yes.

10 Q All right. Why not Wednesday?

11 A I was off Wednesday.

12 Q Is that your normal day off?

13 A Yes.

14 Q All right. What did you tell 'em regarding your
15 cleaning that room on Thursday, December, what would have
16 been the 13th; Friday, December 14th; and Saturday, December
17 15th?

18 A I didn't clean their room.

19 Q And why didn't you clean the room?

20 A It had a do not disturb sign on the door.

21 Q Now we got to Saturday. I believe that would have
22 been December 16th. And you did clean the room on that
23 Saturday; is that correct?

1 A Yes.

2 Q Can you tell this jury how you cleaned the room and
3 where you cleaned the room, what parts of the room you
4 cleaned?

5 A When I got there, the do not disturb sign was off
6 the door. I knocked. Nobody answered. I went in and it was
7 pretty much empty. There was no personal items. So I
8 checked at the front desk to see if they were still a
9 stay-over. She said no and told me to clean the room like a
10 regular checkout. So I did. I stripped out the beds, all
11 the linen and everything out the bathroom, and took all the
12 garbage, put it in a bag and proceeded to spray down the room
13 and clean it.

14 Q Now, the trash, do you recall some items, specific
15 items that were in the trash from room 129?

16 A Yeah.

17 Q What items do you recall?

18 A I found some gauze, like a bandage where you wrap up
19 when you get a sore or something, an almost empty bottle of
20 peroxide and some band-aids.

21 Q Do you recall if any of those items were bloody?

22 A I believe a couple of 'em had blood stains on 'em,
23 yeah.

1 Q And did you find the room key in the room?

2 A Yeah. It was laying on the dresser.

3 Q And the room key was, is it like the metal key or is
4 it like a card?

5 A It's a card.

6 Q Okay. And what did you do with those items once you
7 picked them up from the room?

8 A I put them inside a little trash bag, tied it up and
9 then put it on a larger trash bag on my cart.

10 Q And at the end of the day, what did you do with the
11 trash bag that was in your cart?

12 A I take it out to the dumpster that's in the back of
13 the hotel.

14 Q And when these officers from the Howland Police
15 Department came, did you show them where you put the larger
16 trash bag that was in your cart?

17 A Yes, I did.

18 Q And where did you direct them to?

19 A I directed them to the back of the hotel where we
20 keep the dumpster.

21 Q And do you recall what those officers did when you
22 told them that?

23 A Yeah. They got in the dumpster and dug through the

1 trash.

2 Q Okay. Now, I'm gonna show you what's been marked
3 for purposes of identification some photographs here. And
4 I'm gonna show you State's Exhibits 194, 195, 197 and 201 and
5 226. And I'm just gonna start with State's Exhibit 226 and
6 ask you if you recognize what State's Exhibit 226 is. Do you
7 recognize State's Exhibit 226?

8 A That look like the outside of the hotel.

9 Q Excuse me?

10 A Look like the outside of the hotel.

11 Q Okay. I'm gonna show you now State's Exhibit 201
12 and ask if you recognize State's Exhibit 201?

13 A That's the inside of the room.

14 Q All right. One of the rooms at the Days Inn there?

15 A Yeah.

16 Q They all pretty much look the same?

17 A Yeah. Pretty much.

18 Q I'm gonna show you, I'm sorry, I'm not gonna show
19 you 194 and 195. Those are different.

20 I'm gonna show you State's Exhibit 197 and ask if
21 you recognize State's Exhibit 197? Maybe it would help if I
22 showed it to you a little bit closer.

23 A Yeah.

1 Q I'm gonna show you 197.

2 A This look like the stuff that I found in the room.

3 Q All right. And the stuff that the deputies or the
4 detectives later got out of the trash?

5 A Yes.

6 MR. BECKER: Okay. Your Honor, at this
7 time, I have no further questions of this witness.

8 THE COURT: Cross?

9 MR. INGRAM: Just a couple if I may.

10 CROSS EXAMINATION

11 BY MR. INGRAM:

12 Q Hi, how are you?

13 A Okay.

14 Q It's not unusual to have a stay-over room; right?

15 A No. It's not unusual.

16 Q And a stay-over room is where the person is not
17 gonna check out and stay for some period of time like maybe a
18 week?

19 A Yeah.

20 Q And you clean a stay-over room differently than you
21 clean a room where the person is checking out that morning?

22 A Yes.

23 Q You were off on Wednesday. You worked on Thursday.

1 Did you see anybody around this room on Thursday?

2 A No.

3 Q Did you see any vehicles around the room on
4 Thursday?

5 A Not that I can really recall.

6 Q On Friday, did you see anybody around the room?

7 A No, not that I recall.

8 Q And on Friday, you didn't see any vehicles around
9 the room; right?

10 A I don't think so, no.

11 Q On Saturday, the do not disturb sign is off the
12 door?

13 A Yes.

14 Q You go ahead in?

15 A Uh-huh.

16 Q And as I understand your testimony, you were
17 uncertain whether the occupant of that room had checked out
18 or not; is that correct?

19 A Yes.

20 Q So you called the front desk?

21 A Yes.

22 Q And the front desk told you that the room was still
23 paid for a couple days?

1 A I'm not exactly sure what she said, but she told me
2 to go ahead and clean it as a checkout.

3 Q Her name would be Rita?

4 A Yes.

5 Q And you talked to the police back on December 18th?

6 A I believe it was.

7 Q You think if you looked at your statement it might
8 refresh your recollection as to what Rita told you?

9 A It might.

10 Q Why don't you just look at the first couple lines of
11 that paragraph right there?

12 A (Witness complies.)

13 Q You done?

14 A Yes.

15 Q Does that refresh your recollection a little bit?

16 A Yeah.

17 Q And did Rita tell you that the room was, in fact,
18 rented for another couple of days?

19 A Yes, she did.

20 Q But she did tell you that you could go ahead and
21 clean it?

22 A Yeah. She told me to go ahead and clean it like a
23 checkout.

1 MR. INGRAM: Okay. Thank you. I have no
2 further questions, Your Honor.

3 THE WITNESS: Uh-huh.

4 THE COURT: Any redirect?

5 MR. BECKER: Your Honor, I have no
6 redirect of this witness.

7 THE COURT: Ma'am, I thank you very much.
8 You're excused.

9 THE WITNESS: Thank you.

10 WHEREUPON,

11 MIKE YANNUCCI,

12 having been first duly sworn, according to law, was examined
13 and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BECKER:

16 Q Would you please introduce yourself to this jury,
17 please?

18 A Detective Mike Yannucci with the Trumbull County
19 Sheriff's Department.

20 Q And how long have you been with the Trumbull County
21 Sheriff's Department?

22 A Over seven years.

23 Q Mike, I want to ask you what your current duties are

1 with the Trumbull County Sheriff's Department?

2 A Currently assigned to the narcotics unit.

3 Q All right. In addition to the narcotics unit duties
4 that you have, I believe you're also part of some, for lack
5 of a better term, special unit with the Sheriff's Department?

6 A Yes. I'm also an active member of the SWAT team.

7 Q All right. And I know for some budgetary reasons, I
8 think our SWAT team is inactive at this time?

9 A That's correct.

10 Q However, in December of 2001, the Trumbull County
11 SWAT team was in operation; is that correct?

12 A That's correct.

13 Q All right. Can you briefly tell this jury what it
14 is the Trumbull County SWAT team does?

15 A Well, the SWAT team will handle any type of
16 high-risk incident, whether it be a raid on a drug house,
17 hostage situation, high-risk warrant arrest, anything like
18 that.

19 Q All right. And is there any special training that
20 you had that prepared you for the SWAT team?

21 A Yes. I've gone to several schools, including the
22 FBI SWAT school.

23 Q Now, are you familiar with the Youngstown Violent

1 Crimes Task Force?

2 A Yes, sir.

3 Q And what is your knowledge of what the Youngstown
4 Violent Crimes Task Force is?

5 A They're made up of guys from different police
6 departments in the Mahoning County and it's kind of like a
7 county-wide SWAT team, but they're from different
8 departments.

9 Q And is it unusual for the Trumbull or was it unusual
10 for the Trumbull County SWAT team to work with other law
11 enforcement agencies, including the Youngstown Violent Crimes
12 Task Force?

13 A No. That's not uncommon.

14 Q Now, I want to ask you or direct your attention to
15 specifically December 21st of 2001. Were you called out to
16 assist another law enforcement agency on that date as a
17 member of the SWAT team?

18 A Yes.

19 Q All right. What other agency were you called out to
20 assist with?

21 A Howland Township.

22 Q And you went to a location, I believe, in Howland;
23 is that correct?

1 A That's correct.

2 Q After going to that location in Howland, did you go
3 to a second location outside of Trumbull County?

4 A Yes, we did.

5 Q All right. Can you tell this jury what location you
6 went to outside of Trumbull County?

7 A It was 791 Wirt Street.

8 Q And do you know which city that was located in?

9 A Youngstown.

10 Q Now, who would have been with you from the Trumbull
11 County SWAT team as best you can recall? Were you the only
12 one or were there other members?

13 A No. I believe there was five from Trumbull County.
14 I believe it was Major Phillips, Captain Bacon, Lieutenant
15 McBride, Detective Tackett and myself.

16 Q Were you met with any other members of any other law
17 enforcement SWAT teams?

18 A Yes. We staged with the Violent Crimes Task Force
19 once we got to Youngstown.

20 Q Okay. And can you tell this jury what it means to
21 stage?

22 A Basically what you're doing is you're making a plan
23 for the house that you're gonna execute the search on.

1 Q And the location that you were looking for at 791
2 was it Wirt Street?

3 A Wirt, w-i-r-t, yes.

4 Q All right. That location, did you have a, do you
5 know what your reason was at the staging? Did you know what
6 the reason was for going in there?

7 A There was a suspect there involved in a homicide
8 supposedly inside that residence.

9 Q And what was your job to go into this location to
10 do?

11 A To extract him.

12 Q Now, after you went and you staged at the location,
13 you actually went to this 791 Wirt Street --

14 A That's correct.

15 Q -- location? And, in fact, was an individual
16 arrested out of that location?

17 A Yes, he was.

18 Q And do you know what his name was?

19 A Nate Jackson.

20 Q Now, I'm gonna show you some photographs that have
21 previously been marked for identification as State's Exhibits
22 229, 227, 228, 229, 231, 232, 234. I'm gonna ask you to take
23 a look at these photographs, Officer Yannucci. I'm gonna let

1 you look at these.

2 A (Witness complies.) Okay.

3 Q Do you recognize all of those photographs?

4 A Yes, sir.

5 Q All right. Let me put them on the screen so the
6 jury can see them as well. I'm going to put on the screen
7 State's Exhibit Number, this is going to be a poor
8 photograph, but I want you to see State's Exhibit 229. It
9 looks like it was taken at night?

10 A Yes. That's a photo of the front of 791 Wirt
11 Street.

12 Q I assume that was taken or do you know when that
13 photograph was taken?

14 A About the time we were there, yeah. About 1, 2 in
15 the morning I would think.

16 Q I'm gonna show you State's Exhibit 228.

17 A That's the front door of the same residence.

18 Q I'm gonna show you State's Exhibit 231. Do you
19 recognize what State's Exhibit 231 is?

20 A That's the closet where the gloves were located.

21 Q And what type of gloves did you locate at that Wirt
22 Street address?

23 A Black leather gloves.

1 Q Would you characterize those, how would you
2 characterize the thickness of those gloves?

3 A They weren't very thick. They had a little bit of
4 lining, but not very much.

5 Q Can you maybe use that laser pointer that's in front
6 of you there? It should be right in front of you. It looks
7 like a remote control. Right on the desk there. There
8 should be a button that says laser. Can you point for the
9 jury where those gloves were found?

10 A Right back in that far left-hand corner.

11 Q Okay. I'm going to show you State's Exhibit 233.
12 Again, what is State's Exhibit 233?

13 A Right there (indicating.)

14 Q And State's Exhibit 234?

15 A Right there (indicating.)

16 Q Okay. I'm also gonna show you State's Exhibit 227.
17 What is State's Exhibit 227?

18 A That's a door off a dining room that goes into a
19 bedroom and down there (indicating) was where a pair of
20 tennis shoes that the suspect was wearing.

21 Q All right. And 232 is right here.

22 A That's just the door, going through there is that
23 hallway where the gloves were located.

1 Q All right. Now, all of those photographs clearly
2 and accurately depict the scene as you observed it on
3 December 21st, 2001?

4 A Yes, sir.

5 Q All right. Beside you, I believe there are some
6 rubber gloves in a box there if you wouldn't mind standing up
7 and grabbing those.

8 A (Witness complies.)

9 Q I'm gonna hand you a paper bag that's been marked
10 for purpose of identification as State's Exhibit 317 and ask
11 if you recognize State's Exhibit 317?

12 A Yes, I do. This is the paper bag that I put the
13 gloves into.

14 Q All right. And how do you know that's the paper bag
15 that you put those gloves into?

16 A That's my handwriting.

17 Q And can you please show us the items that are in
18 State's Exhibit 317?

19 A (Witness complies.)

20 Q Anything unusual about those gloves?

21 A Yes, sir. The left index finger on the glove
22 appears to be torn.

23 Q And does there appear to be anything on it?

1 A At this point, I'm having a hard time seeing it, but
2 when I found it, there was a red substance.

3 Q And do those pair of gloves, are they the same pair
4 of gloves that you found on December 21st, 2001 --

5 A Yes, sir.

6 Q -- at Wirt Street in Youngstown?

7 A Yes.

8 Q Are they in the same or substantially the same
9 condition as when you found them?

10 A Yes. Minus the red substance. It was more visible
11 on the fingertip.

12 Q What did you do with State's Exhibit 317 after you
13 retrieved them from the Wirt or Wirt Street address in
14 Youngstown, Ohio?

15 A I bagged the evidence and turned it over to
16 Lieutenant McBride who was on scene in charge at the time.

17 Q Okay. Go ahead and put those away, please.

18 A (Witness complies.)

19 MR. BECKER: Your Honor, I have nothing
20 further of this witness -- or hold on.

21 Q The bag that you indicated there, did you sign that
22 bag?

23 A Yes, sir.

1 Q And your signature appears thereon?

2 A Yes, sir.

3 Q And you dated it I believe?

4 A Yes, sir.

5 Q And the date contained on that bag is?

6 A 12-21 of '01.

7 Q Yeah. And it was eventually sealed by you?

8 A Oh, absolutely. Yes.

9 Q And that was, and then it was turned over to
10 Lieutenant McBride?

11 A That's correct.

12 MR. BECKER: All right. I have nothing
13 further.

14 THE COURT: Cross?

15 CROSS EXAMINATION

16 BY MR. INGRAM:

17 Q You're a member of a SWAT team?

18 A Yes, sir.

19 Q And as I understand what you just said, you have
20 specialized training to deal with high-risk incidents?

21 A That's correct, sir.

22 Q And before you went to 791 Wirt, did you go to 254
23 Fonderlac?

1 A Yes, sir.

2 Q You had a staging at Wirt. Did you have a staging
3 at Fonderlac?

4 A Yes, sir.

5 Q Did you kick the kitchen door in?

6 A I myself or the team?

7 Q Did somebody, a member of the SWAT team, kick the
8 kitchen door in?

9 A Yes.

10 Q Did other members rush in through the front door
11 when Donna opened the door?

12 A I can't speak for that. I was in a different part
13 of the house at the time.

14 Q All right. But she's arrested by this
15 high-incident, specialized training SWAT team on December
16 21st?

17 A That's correct.

18 Q And from there, you fellows meet up with some guys
19 from Youngstown and go to Wirt?

20 A That's correct.

21 MR. INGRAM: Would you put 231 back up on
22 the screen for me, please?

23 MR. BECKER: Sure.

1 Q (By Mr. Ingram) You're not gonna need to take
2 anything out of that bag. If you find gloves uncomfortable,
3 you can take them off.

4 A Thank you.

5 MR. BECKER: 231?

6 MR. INGRAM: 231. Isn't that a picture of
7 the closet?

8 MR. BECKER: Yeah.

9 Q (By Mr. Ingram) That's one of several pictures of
10 the closet in which you found the gloves that are located in
11 a brown paper bag; correct?

12 A Correct.

13 Q Were there other belongings in that closet?

14 A Yes. It was filled with other items of clothing,
15 stuff like that.

16 Q Were they male? Was it male clothing?

17 A I don't recall the other type. There was a bunch of
18 junk basically in the bottom of that.

19 Q Any papers containing the name Nate Jackson?

20 A No.

21 Q Did anyone direct your attention to that closet or
22 did you find those gloves on your own?

23 A I found 'em on my own.

1 MR. INGRAM: Thank you, Mr. Becker.

2 Q (By Mr. Ingram) Did you find any of Donna Roberts'
3 personal belongings at 791 Wirt?

4 A No.

5 MR. INGRAM: No further questions, Your
6 Honor.

7 THE COURT: Any redirect?

8 MR. INGRAM: Oh, I do have one question.
9 I'm sorry.

10 Q (By Mr. Ingram) You're not from Youngstown. Do you
11 have, if you don't know the answer to this, fair enough. Do
12 you have any idea how far 791 Wirt is from the intersection
13 of Pershing and Victoria?

14 A Not a clue, sir.

15 MR. INGRAM: Thank you.

16 THE COURT: Redirect?

17 MR. BECKER: I have nothing further, Your
18 Honor.

19 THE COURT: Thank you.

20 THE WITNESS: Thank you, sir.

21 * * *

22

23

1 WHEREUPON,

2 ANTHONY LESHNACK,

3 having been first duly sworn, according to law, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BAILEY:

7 Q Sergeant, do you want to tell the Court and jury
8 your full name, place of employment and position?

9 A Yes. My name is Anthony Leshnack. I'm employed
10 with the Trumbull County Sheriff's Office as a sergeant.

11 Q And how long have you been so employed?

12 A Over eight years.

13 Q And your duties and responsibilities with the
14 Sheriff's Office?

15 A Yes, I do.

16 Q Oh, what are they?

17 A What are my responsibilities?

18 Q Right.

19 A Right now or at the time of this incident?

20 Q Well, what are your duties now and then what were
21 your duties back at the time of the incident?

22 A Right now, I'm a sergeant in the civil division
23 transporting and --

1 Q Tony, can you move that mike a little closer?

2 A (Witness complies.)

3 Q Okay.

4 A Okay. I'm sergeant in the civil division. I
5 transport prisoners and deliver civil process.

6 Q Okay. And back then, back in December 11th and 12th
7 of 2001, what were your duties?

8 A I was a detective in the Investigations ID Bureau.
9 I, part of my responsibilities were of processing crime
10 scenes. I was also a member of the Trumbull County Homicide
11 Task Force.

12 Q Okay. Now I'm gonna direct your attention to
13 December 12th of 2001. Did you have occasion to get called
14 out in the early morning hours just after midnight?

15 A Yes, I did.

16 Q And where, to where did you respond?

17 A I don't know the exact address. It was Fonderlac
18 Drive, I believe, in Howland Township.

19 Q Was it the scene of a homicide?

20 A Yes, it was.

21 Q And in what county and state is that located?

22 A Trumbull County, Ohio.

23 Q Okay. Now, why were you called?

1 A Detective Sergeant Monroe called me as a member of
2 the homicide task force to assist in photographing and
3 processing the crime scene at that location.

4 Q Okay. Now, who was the senior officer at the
5 Sheriff's Office involved with that process?

6 A Detective Sergeant Pizzulo.

7 Q And did you work with him in that time period doing
8 that?

9 A At that particular scene?

10 Q At that particular time. No, not at that scene, but
11 at that time?

12 A At that time, we were working together.

13 Q Okay. Was he able to go that night?

14 A No. He was not available for work.

15 Q Okay. Now how, approximately, if you got called
16 about, what, about 12:12 in the morning?

17 A That's correct.

18 Q How long, approximately, did it take you to arrive
19 at the scene?

20 A I'm sure I was there within 45 minutes.

21 Q Okay. Now, when you got there, what was the weather
22 like?

23 A It was a cool evening I believe. Not cold, but

1 cool.

2 Q And do you remember what kind of clothing you had
3 on?

4 A I believe I was wearing a light sweat shirt.

5 Q Okay. Did you have to wear any gloves, winter
6 gloves or anything like that?

7 A No. No winter gloves.

8 Q Okay. Now once you got to that scene, can you tell
9 the jury what you did when you got there?

10 A I spoke to Detective Sergeant Monroe. He advised --

11 Q Is that Chief Monroe now?

12 A He is Chief Monroe.

13 Q But back then, Paul Monroe was Detective Sergeant?

14 A That's correct.

15 Q Okay. And what, you spoke with him and then what
16 happened?

17 A After I spoke with him, he advised me of the
18 situation, took me around the scene, asked me to take
19 photographs and assist in processing the scene.

20 Q Okay. And did you photograph the scene?

21 A Yes, I did.

22 Q Now where, what areas did you photograph?

23 A All areas outside and inside of the house.

1 Q Okay. And when you took the photographs, who was
2 there at the time?

3 A Detective Sergeant Monroe was with me.

4 Q Okay. So he was there when you made the
5 photographs?

6 A To my recollection, he was there for most of the
7 photographs. I can't say every one.

8 Q Okay. And do you take more than one roll of film?

9 A Yes, I did.

10 Q And that night, did you take more than one, use up
11 more than one roll of film?

12 A Yes, I did. I believe I used 13 rolls of film.

13 Q Thirteen rolls of film? Okay.

14 And when you got done, where, did you turn those
15 photographs over to the Howland Township Police Department?

16 A Yes, I did.

17 Q Now, how many photos are on a roll?

18 A They average, I believe at the time I was using 24
19 exposures. There may have been some 36 exposures in there
20 and some 12 exposures also. I couldn't be for sure.

21 Q Okay. And 13 rolls of both 36 and 24 exposures?

22 A On the average, there would be 24 exposures.

23 Q Okay. Did you do anything else at the crime scene?

1 A Yes, I did.

2 Q What did you do?

3 A After taking photographs, I was requested to help
4 process it for fingerprints, which I did, and I also
5 volunteered to sketch the crime scene for 'em.

6 Q Okay. Were you also requested to lift blood
7 samples?

8 A Yes, I was.

9 Q Now, you mentioned fingerprints. What, when you
10 look for fingerprints, what area were you looking at?

11 A I looked at the entrance and exits of the house, the
12 kitchen, the countertop areas, cups and glasses around the
13 immediate scene.

14 Q And were you able to lift anything of significance?

15 A Nothing of significance.

16 Q Okay. Now, on TV programs like CSI, they always
17 find prints. Okay. In real life -- well, what education and
18 training and experience do you have in lifting prints?

19 MR. INGRAM: Did the first part of that
20 question have anything to do with the second part?

21 MR. BAILEY: Yeah. I'm gonna get to it.
22 I'm sorry. What was my question? Can I have that last
23 question --

1 MR. INGRAM: Have you had --

2 MR. BAILEY: Oh, yeah.

3 Q (By Mr. Bailey) What education and training and
4 experience have you had with regards to fingerprints?

5 A I went through the basic academy and did limited
6 fingerprint lifts there and other training. I've been to
7 numerous seminars with the Ohio Identification Officers
8 Association, numerous fingerprint schools, maybe two or three
9 specifically for lifting fingerprints.

10 Q Okay. And have you lifted prints before this?

11 A Yes, I have.

12 Q Or dusted scenes for prints?

13 A Yes, I have.

14 Q Okay. A lot of scenes?

15 A Yes.

16 Q Okay. Now, at this particular scene -- what's
17 significant ridge detail?

18 A Significant ridge detail is the points on your
19 finger that would protrude that would actually leave a mark
20 after being dusted. You'd be able to see the lines in it.
21 And from there, with the ridge detail, you have to find
22 minutia points to determine where, to determine who the
23 fingerprint came from if you had a suspect or you can enter

1 it into our AFIS system.

2 Q What's AFIS?

3 A AFIS is the automated fingerprint identification
4 system.

5 Q Okay. Now, the area that you looked at, what
6 equipment did you use to dust for prints?

7 A I used a brush, black powder, and flourescent powder
8 on some of the darker surfaces.

9 Q And were you able to -- now in the TV programs, they
10 always find prints. In real life, at all the scenes that
11 you've dusted, have you always been able to find prints with
12 significant ridge detail for comparison?

13 A No, not for comparison. Most of the scenes, you're
14 gonna find smudges. You're not gonna get a perfect print
15 like you see on the TV shows. The ones at that scene, I did
16 get some smudges, but nothing that I could identify.

17 Q Okay. Now, you mentioned blood. How do you do
18 that?

19 A Blood samples are taken with a sterile swab in
20 distilled water and packaged in a manila envelope.

21 Q Okay. And did you, were you able to lift, were you
22 able to swab blood stains?

23 A Yes.

1 Q Okay. And what do you do with those?

2 A After swabbing them and packaging them, marking the
3 evidence tape to seal them, I turned everything over to
4 Howland Police Department for, to turn in to a lab for
5 analysis.

6 Q Okay. Now you mentioned, was there any evidence
7 that you took with you personally?

8 A No, there wasn't.

9 Q Okay. Now this was a Howland Township homicide?

10 A That's correct.

11 Q Okay. And this scene that you were at, in what
12 township, county and state was it located?

13 A Trumbull County, Howland Township, Ohio.

14 Q Okay. Now, you said you did a diagram; is that
15 right?

16 A That's correct.

17 Q Sergeant, I'm gonna ask you to come down here. I'm
18 gonna ask you to stand off to the side so that all the jurors
19 can see. Okay. And that State's Exhibit 3 on that easel,
20 can you identify that?

21 A I couldn't hear you, sir.

22 Q Pardon?

23 A I couldn't hear your question. I didn't hear

1 whatever you said.

2 Q Can you identify State's Exhibit 3, that diagram on
3 the easel?

4 A Yes, I can.

5 Q Okay. What is it?

6 A This is a blown-up version of the diagram that I
7 drew, the sketch of this crime scene on Fonderlac.

8 Q Okay. And is that a true and accurate sketch of
9 the, is it a true and accurate blowup of the diagram that you
10 prepared?

11 A Yes, it is.

12 Q And does that list the address of the scene?

13 A Yes, it does.

14 Q What was the address that you were at?

15 A 254 Fonderlac in Howland Township.

16 Q And on the original, what size was the original?

17 A Regular I believe it's nine and a half by eleven is
18 a regular size sheet of paper.

19 Q Okay. Now, how did you prepare that? The original.

20 A The original was done in pencil using rulers and
21 other, other tools for sketching.

22 Q Okay. And do you do the entire outline of the
23 house?

1 A Yes, I did.

2 Q Okay. And are there various points that are on that
3 diagram?

4 A Yes, there are.

5 Q What is, can you briefly go through the various
6 points as you've noted them on the left-hand side to describe
7 what you, what you wrote down there? And tell us, tell the
8 jury and the Court what that diagram depicts. You can use
9 the pointer so that they can see.

10 A Okay. This is an overall diagram of the house in
11 each room of the house concentrating on where the victim was
12 found. I have certain points marked here.

13 Q You're pointing to the bottom left now for a key?

14 A Correct. That's my key. I have point A and point B
15 marked, which are starting points; point A and point B, which
16 is a door jam facing the victim. I also have two other
17 starting points I used to triangulate my measurements, point
18 A1 and point B1, which is the actual, the other side of the
19 door jam facing into the garage.

20 From point A to point B, the measurements are
21 triangulated to certain objects or a piece of evidence.

22 The first one I have is the left hand of the victim,
23 which from point A to point B was zero. I'm sorry. Yeah.

1 Point A, yeah, would be zero inches, which was the starting
2 point.

3 The right hand from point A was 25 inches to 38
4 inches away from point B.

5 The left shoe was located 72 inches from point A and
6 74 inches from point B.

7 The right shoe was located 63 inches from point A
8 and 67 inches from point B.

9 The opposite side of the door jam was used to locate
10 items in the garage area. Point A1, the gun, was found at
11 ten inches.

12 These are all to center by the way.

13 Q Okay. You mentioned a gun?

14 A Yes. There was a gun found.

15 Q And you have that marked with a spot on the diagram?

16 A Correct.

17 Q What's that marked?

18 A It's marked right here on the diagram, and it's
19 located ten inches from point A1 and 29 inches from point B1.
20 That was found on the step leading into the garage.

21 The next piece that may have been of some
22 significance was a white stub that was found here, 34 inches
23 from point A1 and I believe four feet five inches, I'm sorry,

1 that's not 34 inches, that's three feet four inches from
2 point A1 and four feet five inches from point B1.

3 There's also glasses.

4 Q When you say glasses, you mean eyeglasses?

5 A They were eyeglasses with the left lens missing,
6 which they were located five feet five inches from point A1
7 and six foot five inches from point B1.

8 Also, the right lens of the pair of glasses were
9 found nine feet four inches from point A1 and ten feet eleven
10 inches from point B1.

11 There was a bracket with a screw found nine feet two
12 inches from point A1 and ten feet seven inches from point B1.

13 There was also another bracket found twelve feet
14 five inches from point A1 and fourteen foot two inches from
15 point B1.

16 Q Okay.

17 A Those are the only measurements I have depicting
18 evidence or body parts so that the body could be repositioned
19 at a later time if needed.

20 Q Okay. And you marked down the layout of the rest of
21 the house?

22 A Yes, I did.

23 Q What do you note on there on your diagram as to the

1 layout of the house?

2 A I noted north.

3 Q Can you show that on the diagram, the big diagram,
4 so the jury can see?

5 A This would be facing north. I also want to note
6 that the measurements here are not to scale. I am not an
7 architect, although I was involved in construction, it's
8 close to scale, but it's not exactly to scale.

9 Also depicted the driveway, the garage door, the car
10 in the garage, various rooms, the countertop in the kitchen,
11 the kitchen area, table, chairs, the table in the dining room
12 area, the chairs around it, a red spot which was actually a
13 red drop.

14 Q Okay. That red spot was, what did you do with that?

15 A That was, that was collected and turned over to the
16 Howland Police Department.

17 Q How did you collect that?

18 A I collected it with a sterile swab in distilled
19 water and packaged it in a manila envelope and sealed it and
20 initialed it and dated it.

21 Q And who did you give it to?

22 A Detective Sergeant Monroe.

23 Q Okay. Now, you have a stairwell with a bullet hole

1 that's marked in there?

2 A Yes. The stairwell going down with a bullet hole
3 that was found in the ceiling going down the step.

4 Q Okay. What did you do when you noted that? Did you
5 search that area for anything?

6 A Yes. We searched the area.

7 Q Did you find anything?

8 A Yes. We cut out the drywall and found a lead bullet
9 in the I believe the two by four.

10 Q Okay. You included that in your diagram?

11 A Yes. Would you like me to continue?

12 Q Sure. Go ahead.

13 A Also master bedroom, I marked master bedroom, the
14 bed, the bathroom, a dead space in the wall, a secondary
15 bedroom, the bed, the bathroom, the tub and the laundry
16 facilities, another family room, a couch, a piano, the TV and
17 second or third, second or third family room and an office
18 area.

19 Q Okay. And that's what you personally observed
20 somewhere around 1:00 in the morning or soon thereafter on
21 December 12th at 254 Fonderlac?

22 A That's correct.

23 Q If you can resume the stand, please.

1 A (Witness resumes witness stand.)

2 Q Now, did you assist the medical examiner that night
3 with the photography?

4 A Yes.

5 Q Dr. Germaniuk?

6 A That's correct.

7 Q Okay. And on December 12th about 2:00 in the
8 afternoon, did you return to that scene?

9 A Yes, I did.

10 Q Okay. What was the purpose of doing that?

11 A I wanted to bring Detective Sergeant Pizzulo back to
12 the scene and review what we did the night he couldn't make
13 it.

14 Q Okay. Did you additionally, process additional
15 areas for prints?

16 A Not for prints at that time. I believe we pulled
17 some blood samples up at that time.

18 Q Okay. And what did you do with those?

19 A We packaged them and turned them over to Howland
20 Township Police.

21 Q Okay. And then the next day, on December 13th, did
22 you take some additional photographs?

23 A I believe we did.

1 Q And additional blood stains from the garage floor?

2 A Correct. That was the -- I'm sorry. I have the
3 days mixed up. It was that day, the 13th.

4 Q On the 13th?

5 A Right.

6 Q Okay. But going back to the 12th, you went back to
7 the scene in the afternoon; right? I mean because you were
8 there in the early morning hours around, right after
9 midnight?

10 A Right. We were there for a long time. We needed to
11 get some rest and come back.

12 Q Okay. So when you went back to the scene, you did
13 additional print processing?

14 A Correct.

15 Q And additional blood stain processing?

16 A I'm not sure if we did anymore blood stain
17 processing at that time or not.

18 Q Do you have your report of December 12th?

19 A I have to check it.

20 Q Do you need to look at that to refresh your
21 recollection?

22 A Yes.

23 Q Okay. Now, did you get a chance to read the second

1 and third paragraphs?

2 A Yes.

3 Q So you went to that scene twice on December 12th and
4 once on the 13th?

5 A That's correct.

6 Q And during those occasions, you did blood processing
7 and print processing; is that right?

8 A That's correct.

9 Q Okay. And everything you found, you turned over to
10 Detective Sergeant Monroe?

11 A That's correct.

12 MR. BAILEY: Okay. Thank you.

13 THE COURT: Cross.

14 CROSS EXAMINATION

15 BY MR. JUHASZ:

16 Q Sergeant Leshnack, good afternoon. Do you still
17 have the, yeah, do you have the diagram there that has the
18 measurements on it?

19 A Yes.

20 Q Let's use that one just so it's easier for you to
21 read; okay?

22 A Okay.

23 Q If I understand what you did with this diagram,

1 State's Exhibit 3, you took two starting points, A and B, so
2 that you could triangulate the measurements; correct?

3 A That's correct.

4 Q So that there would be, for every significant item
5 recorded on the diagram, there would be not one, but two,
6 measurements so that if somebody ever wanted to go back and
7 look at the house and see where the person's hand was, there
8 would be a way to triangulate it and make it precise;
9 correct?

10 A That's correct.

11 Q All right. You also have two other starting points,
12 don't you, called A1 and B1; correct?

13 A That's correct.

14 Q Now, if I'm reading your diagram correctly, it seems
15 to me that A and B are starting points inside the door jam
16 and A1 and B1 are starting points outside the door jam; is
17 that right?

18 A That's correct.

19 Q Okay. And then you began to measure various items
20 that you regarded as significant to this homicide; correct?

21 A That's correct.

22 Q Now, speaking of the word homicide, did you regard
23 it as a homicide at the time? By the time you were there,

1 it's pretty much regarded as a homicide?

2 A When we first got to the scene, it was a shooting
3 death that we didn't know whether it was self-inflicted or a
4 homicide.

5 Q Okay. But in any event, the purpose of all of the
6 photographs that you've told Mr. Bailey and the jury that you
7 took and the diagram is to record everything that might be a
8 significant event so that later, if you needed to testify
9 about it or show somebody what it looked like, you were able
10 to do that; correct?

11 A That is correct.

12 Q Because as we've just seen, since it's been 17 or 18
13 months, you had to look at your report, you can't remember
14 everything; correct?

15 A That's correct.

16 Q That's why you write down things, so that you're
17 able to look at them later; correct?

18 A Correct.

19 Q Now, you started out with the location of
20 Mr. Fingerhut's left hand; right?

21 A Correct.

22 Q I should say correct, not right, since I'm talking
23 about the left and right hand. You started out with his left

1 hand; am I correct?

2 A Correct.

3 Q And you mentioned that it was zero inches from point
4 A because you, in fact, used that as the starting point;
5 correct?

6 A Correct.

7 Q You also have it as zero inches from point B, which
8 is over here on the other side of the man door; correct?

9 A That's what I wrote down.

10 Q That's what you wrote down?

11 A That's correct.

12 Q And that's not correct, is it?

13 A That is not correct.

14 Q Okay. I assume that you took photographs, you have
15 marked in your diagram a red spot; correct?

16 A That is correct.

17 Q And you mentioned to Mr. Bailey that you used a
18 sterile swab and some distilled water and picked that swab up
19 and turned it over to Howland; correct?

20 A Correct.

21 Q I assume you took a photograph of that; is that
22 right?

23 A Yes, I did.

1 Q You also mentioned to Mr. Bailey that there was a
2 hole in the stairwell, that you guys cut out the drywall; you
3 recall that?

4 A Yes.

5 Q And you have that marked on your diagram, don't you?

6 A I have it marked, correct.

7 Q And I assume you took photographs of that as well?

8 A Correct.

9 Q You took or attempted to lift a number of
10 fingerprints; right?

11 A Correct.

12 Q Now, there's a difference, isn't there, between
13 having the skills to lift a print and having the skills to
14 compare prints; correct?

15 A Absolutely.

16 Q Are you trained in both of those or are you trained
17 only in lifting?

18 A I'm trained in lifting and comparing.

19 Q All right. Mr. Bailey was talking about some of the
20 crime scene shows, how they always get fingerprints and
21 that's wonderful evidence, but the reason that you don't get
22 it is because when we do things, like I'm touching this bench
23 right here, I'm liable to slide my hand when I pull it away

1 like I just did there and that's gonna smear the print;
2 correct?

3 A That's correct.

4 Q As opposed to, you're also trained in how to
5 fingerprint people when you book them when you arrest 'em;
6 right?

7 A Correct.

8 Q And so we've seen that, how you very carefully lay
9 and roll it out so that you get a good print for comparison
10 purposes; correct?

11 A That's correct.

12 Q All right. And if I understand the upshot of your
13 testimony about all of the dusting that you did, while you
14 may have found some ridges or something that you could say,
15 well, that's somebody's fingerprint, you're not able to have
16 enough to compare it with a known print to say whose
17 fingerprint that is?

18 A That's correct.

19 Q Okay. And that's true throughout the entire or
20 whatever printing you did at the residence; correct?

21 A Correct.

22 Q You didn't print every square inch of the place, did
23 you?

1 A No. Not feasible.

2 Q Right. You try to look for places that you think
3 might be significant; correct?

4 A That is correct.

5 Q And if I understood, you basically went to the
6 entrance ways and things like that where people would be
7 using doors, etcetera?

8 A Correct.

9 Q Okay. And again, found nothing that was liftable or
10 comparable?

11 A That's correct.

12 Q All right. Now, these items that we have talked
13 about, the red spot and the bullet hole and the various
14 locations of Mr. Fingerhut, you went to the trouble to
15 measure those and triangulate them and record them; correct?

16 A Which areas?

17 Q I'm sorry. The, you did not triangulate the red
18 spot?

19 A I did not triangulate those.

20 Q Forgive me. But the various areas where
21 Mr. Fingerhut is found, where his hands are, things like
22 that, you went to the trouble to triangulate all of that?

23 A Correct.

1 Q You also did that with the gun?

2 A Correct.

3 Q And with the glasses, correct, in the garage?

4 A Correct.

5 Q And with the bracket in the garage?

6 A Yes.

7 Q Okay. And again, your effort is to try to record
8 everything that might be significant to whatever has happened
9 in that house that you come upon; correct?

10 A That's correct.

11 Q All right. You and I can agree that nowhere in here
12 do you record anything about any footprints in blood;
13 correct?

14 A That's correct. I did not.

15 Q All right. That would be true both for the step;
16 correct?

17 A Correct.

18 Q And for the kitchen?

19 A Correct.

20 Q The gun that was on the step, you triangulated that
21 and measured it; correct?

22 A Yes.

23 Q Did you photograph it as well?

1 A Yes, I did.

2 Q And were you responsible, as part of processing the
3 crime scene, to turn that gun over to Howland or was somebody
4 else involved in that?

5 A That was turned over to Howland also.

6 Q Okay. Did you actually pick the gun up off the step
7 and bag it and turn it over to them?

8 A Myself and Dr. Germaniuk looked at the gun,
9 photographed it. I actually opened the gun up to see what
10 was in the cylinder.

11 Q Okay. And before you did that, did you dust the gun
12 for prints?

13 A No, I did not.

14 Q When you're doing all of this, particularly the
15 prints, are you wearing gloves, something like the latex
16 gloves that are there in front of you on the bench?

17 A Yes, I am.

18 Q Okay. And do you wear those gloves when you pick up
19 that gun and handle it?

20 A Yes, I do.

21 Q And that's to protect the integrity of it, even
22 though you didn't dust it for prints?

23 A That's correct.

1 Q Okay. And after you turn it over to Howland you, of
2 course, have no idea what happens to the gun?

3 A It was turned over to be tested at a lab.

4 Q Well, do you know that from your personal knowledge
5 or is that something somebody told you?

6 A That's from Detective Sergeant Monroe.

7 Q Okay. So that's not something you know about it?

8 A That's correct.

9 MR. JUHASZ: Okay. That's all I have.
10 Thank you very much.

11 MR. BAILEY: No questions.

12 THE COURT: Redirect?

13 MR. BAILEY: No. No other questions, Your
14 Honor.

15 THE COURT: Thank you.

16 THE WITNESS: Thank you.

17 MR. BECKER: Your Honor, I believe it's
18 2:30 and we'd like to take the usual 15-minute break.

19 THE COURT: That's fine. We'll take a
20 15-minute break.

21 Ladies and Gentlemen, you are not to discuss this
22 case among yourselves or with anyone else. Do not permit
23 anyone to discuss it with you or in your presence. Thank

1 you.

2 (Whereupon, a recess was had commencing at 2:30 p.m. and
3 concluding at 2:47 p.m.)

4 THE COURT: Okay. I believe we're ready
5 to proceed. Call your next witness.

6 MR. BECKER: Your Honor, the State would
7 call Santiago Mason.

8 **WHEREUPON,**

9 **SANTIAGO MASON,**

10 having been first duly sworn, according to law, was examined
11 and testified as follows:

12 **DIRECT EXAMINATION**

13 **BY MR. BECKER:**

14 Q All right. Would you please introduce yourself to
15 this jury?

16 A My name is Santiago Mason.

17 Q All right. And Mr. Mason, you still may want to
18 maybe scoot a little bit closer.

19 A Santiago Mason.

20 Q Okay. Very good. Mr. Mason, where do you live at?

21 A Right now, I live at 407 Southern Boulevard,
22 apartment 215.

23 Q And Mr. Mason, what is your date of birth?

1 A 11-13-68.

2 Q Mr. Mason, I want to direct your attention to
3 October, November, December of 2001. Actually, I guess just
4 the fall, September, October, November of 2001. Were you
5 going to the Warren bus station at certain intervals at that
6 time?

7 A Yes.

8 Q What was your reason in going to the Warren bus
9 terminal?

10 A I have family live in Cleveland. I'm from Cleveland
11 myself.

12 Q Okay. And is that the transportation method you
13 would use to go visit that family?

14 A Yes. Yes.

15 Q While you were going to -- well, how often would you
16 use the Greyhound station here in Warren?

17 A Like on a, right now I don't use it, but back then,
18 I was using it like every other weekend.

19 Q All right. And when you would go to the Warren bus
20 station, did you become familiar with any of the employees
21 there or any of the people that were there?

22 A Yes.

23 Q Do you recall who you became familiar with?

1 A Yes.

2 Q Do you recall the name?

3 A Donna Roberts.

4 Q All right. And just in your own words, tell us how
5 you got to know Donna Roberts.

6 A Well, I was going to Cleveland and she was writing
7 her boyfriend, Mr. Jackson, at the time and there was a
8 picture and I was incarcerated myself in Belmont Institution
9 myself so I remembered the background. I was like just
10 passing conversation since I was sitting there. And I was
11 like, "That picture like he in Belmont."

12 And she's like, "He is. Do you know him?"

13 I'm like, "No, I don't know him, but I know the
14 background of the picture because I was, I took pictures in
15 that room before."

16 And we just started talking and everything.

17 Q So you became familiar with Miss Roberts through
18 some previous incarceration that you had been in trouble for?

19 A Yes.

20 Q And can you tell this jury what you were
21 incarcerated for?

22 A Oh, I was incarcerated for not watching my parole
23 officer. They put it for escape. Up under the new law, it's

1 escape right now.

2 Q All right. And were you on parole at the time?

3 A Yes, I was on parole at the time.

4 Q All right. Now, at some point, I believe in
5 November of 2001, did Miss Roberts offer to do something with
6 you?

7 A Oh, she just told me to stop back at the bus stop
8 when I get back from Cleveland. And we just started talking
9 and that's kind of what, we started getting better with each
10 other and we, I sat there until she got off work and we got
11 in her car or whatever.

12 Q Now do you recall approximately what date of the,
13 what date in November?

14 A It was a little after my birthday.

15 Q So sometime after November 13th?

16 A My birthday is the 13th of November so it was like a
17 couple days after my birthday.

18 Q And, in fact, you took her up on her offer to meet
19 her after work?

20 A Yes.

21 Q And can you tell this jury in your own words what
22 you did that particular day?

23 A Well, after she got off, she locked up the building

1 and everything. We got in the car, she had a red Chrysler,
2 and I thought she was pulling out a pack of cigarettes and
3 she pull out a big old pack of fat joints. And I'm like, I'm
4 thinkin' she's gonna smoke a cigarette so I rolled my window
5 down because I don't smoke cigarettes at all. So we ridin'
6 and I smell, I'm like, "What you smokin'? You smokin' weed?"

7 And she like, "Yeah."

8 I'm like, "Oh, man, you a live old lady."

9 You know what I'm saying? So she throw on her
10 little CD player and started playing thug music and stuff.
11 I'm like --

12 Q What kind of music was it?

13 A Thug music.

14 Q Okay. What is thug music?

15 A Like Trick Daddy, I'm A Thug, whatever.

16 Q Okay. Is it what we call rap music?

17 A Yes. Rap music.

18 Q Okay.

19 A Yeah. And I asked her, I'm like, "What is you doin'
20 listening to this type of music, you know what I'm saying, at
21 your age"?

22 She like, "My boyfriend hook me onto this kind of
23 music," or whatever.

1 Q And at that time, you knew her boyfriend to be?

2 A Her boyfriend was Nathaniel Jackson at that time.

3 Q And that's the same person --

4 A That's the same guy I seen she was writin' and the
5 picture that was on the desk and everything.

6 Q And what did you do after she drove you around?
7 Where did you go?

8 A Well, we went into her house out there.

9 Q And do you know where her house was?

10 A In Howland.

11 Q All right. I'm gonna show you what's been marked
12 for purposes of identification as State's Exhibit 126 -- 126,
13 104, 249 and 124. I'm gonna show you up here on this screen
14 what's been marked for purposes of identification as State's
15 Exhibit 126. Do you recognize what State's Exhibit 126 is?

16 A I recognize the house.

17 Q That you went to in November of 2001?

18 A Yes.

19 Q All right. And when you were in that house, did you
20 observe anything or what did you do in the house I guess?

21 A Well, we went in the house. I sat down and
22 observed. There was a leather couch. The house was nice.
23 You know what I'm saying? The house was really nice.

1 Q What kind of couch was it?

2 A Leather black couch.

3 Q All right. I'm going to show you State's Exhibit
4 124 and ask if you recognize State's Exhibit 124?

5 A That's the couch.

6 Q And what did you do on that couch?

7 A She gave me a blow job on that couch.

8 Q All right. And I'm gonna show you now State's
9 Exhibit 104 and ask if you recognize State's Exhibit 104?

10 A We took it to the room, that room right there, and
11 she wanted me to have sex with her and I told her no.

12 Q All right. Why did you tell her you didn't want to
13 have -- she wanted to have vaginal sex with you?

14 A Intercourse. She wanted me to stick it in.

15 Q Was this before or after she had given you oral sex?

16 A This was out there on the couch, she gave me oral
17 sex and then we worked our way back to the room.

18 Q What did you distinctly remember about the room?

19 A All them jerseys.

20 Q Why did that catch your eyes?

21 A Because I love jerseys myself. You know what I'm
22 saying?

23 Q And did you ask her anything?

1 A Yeah. I asked her could I get one. They was all
2 too small for me because they was all mediums and smalls and
3 large. I wear like a 3X so they was all too small for me.
4 And she told me --

5 Q You're a rather large individual?

6 A Yeah.

7 Q What's your height and weight?

8 A 6'1", 240.

9 Q Is that about the same height and weight you were --

10 A Back then, I was weighin' a little bit more then. I
11 was weighin' like 250 then. I lost a little weight.

12 Q And I'm gonna show you State's Exhibit 249 and ask
13 if you recognize State's Exhibit 249?

14 A Yes. I remember that.

15 Q What is State's Exhibit 249?

16 A The plants, the background of brass and the glass
17 back there in the background.

18 Q And was that in that residence?

19 A Yes. That's at that residence.

20 Q And do you recognize the individual there?

21 A Yes.

22 Q And who is it?

23 A Donna Roberts.

1 Q Now, Mr. Mason, do those photographs fairly and
2 accurately depict Donna Roberts in the residence at 254
3 Fonderlac?

4 A That's what I seen in the house when I was there,
5 yes.

6 Q Now, after you refused to have intercourse with her,
7 what happened?

8 A She got attitude.

9 Q What do you mean when you say she got attitude?

10 A For one thing, she come up to my job. First, she
11 called.

12 Q Well, right, right that day. What happened?

13 A That day, she got mad and she wanted me to walk
14 home, but she gave me a ride back to Greyhound.

15 Q Did she say anything to you about you refusing to
16 have intercourse with her?

17 A She just balled her face up, got attitude and, "Come
18 on, I'm taking you back where you came from," or whatever and
19 dropped me off.

20 Q Where did she take you?

21 A She dropped me right back off at Greyhound.

22 Q Here in Warren?

23 A Yeah. Here in Warren.

1 Q Now, a few days later, did you have a chance to see
2 Donna Roberts again?

3 A Yes. We talked.

4 Q And tell this jury how you came to see Donna Roberts
5 again.

6 A She had called up to my job.

7 Q And where were you working?

8 A I was workin' at Vista Windows at this time up on
9 Elm.

10 Q Up on Elm Road?

11 A Elm Road, yes. It's right behind Perkins.

12 Q And what did she do when she came to see you?

13 A Well, I thought she was coming up there to take me
14 out to lunch. Then I pulled up from Wendy's. She's standing
15 outside with her cell phone callin' me all kind of black MFs
16 and, "Mother Fucker, you took my gun. Why in the fuck you
17 take my money?" And this and that and all this.

18 And I'm looking at her like she crazy. Like what
19 the hell is you talkin' about? I said, "You must deal with
20 too many black guys. You can't point the finger at me
21 because you deal with too many of 'em."

22 And she was like, "I know you done it. I'm gonna
23 have the police come up here and arrest you for stealing my

1 gun and stealing my money," and some kind of phone calls and
2 crap. Trying to just claim all kind of craps on me. So
3 after that, she left.

4 Before she left, my boss came outside and told her,
5 asked her what she was waiting on. And she said, "I'm
6 waiting on Howland Police," and he said, "Good. Because they
7 can come and take you to jail, too, for being on private
8 property."

9 So that's when she left. The next day, I go to
10 work, Howland Police come up there again and ask me to come
11 up to the police station for questioning.

12 Q Right.

13 A So I go up there, they put me in the room and record
14 me or whatever, ask me questions about the last time I seen
15 her and did I know anything about a gun and all this and
16 that. I'm telling 'em no. So next thing I know, they tell
17 me I have a warrant out for my arrest. I'm like, "For what?"

18 "For a stolen gun."

19 I'm like, "How could you put a warrant out for
20 somebody's arrest and I ain't done anything?"

21 They say, "Well, this is the law," or whatever.

22 "You going to jail. You going down to the county."

23 So they took me down to the county. I was down

1 there for like two or three days. I lost my job behind that.

2 Q You lost your job because you were incarcerated for
3 those two or three days?

4 A Yes. Because, first, my boss was gonna get me out,
5 but they couldn't get me out because I had a speeding ticket
6 too. See what I'm sayin'? So they were holding me down for
7 that. So that's another reason they probably hold me a
8 couple of days, too, because I had a speeding ticket.

9 But other than that, they hold me in there and I
10 finally got out. I think it was on a Tuesday I got out of
11 jail. And as soon as I done that, I got me an attorney. But
12 at the time, I was still talking to Detective Hoolihan and
13 another detective. I forgot his name. I just seen the
14 fellow here. He was here today.

15 Q So eventually what happened with this accusation
16 that you stole Miss Roberts' gun?

17 A Yeah. She said I pulled her gun. I went to work.
18 Then at the time, I remember right before I got fired from my
19 job, I went to work, they was like detectives came back up
20 there again and told me that I had to come up there and take
21 care of, go to the police station and talk to some more
22 police officers and everything.

23 Q Were you ever convicted of that crime, of stealing

1 her gun?

2 A No, I was not convicted.

3 Q Now, Mr. Mason, the individual that you've described
4 as Donna Roberts, is she here in this courtroom?

5 A Yes, she is.

6 Q Can you please identify or point to her?

7 A She right there (indicating.)

8 MR. BECKER: Please allow the record to
9 reflect that the witness has identified Donna Roberts.

10 THE COURT: The record will so reflect.

11 MR. BECKER: Give me one moment, Your
12 Honor.

13 THE COURT: Sir, do you mind being
14 photographed while you're on the stand? You have the right
15 not to be photographed. If you don't mind, then that's okay.

16 THE WITNESS: I don't want to be
17 photographed. I don't want to be in the newspaper, anything.

18 THE COURT: I'm sorry?

19 THE WITNESS: I do not want to be
20 photographed because I don't want to be in the newspaper, my
21 picture.

22 THE COURT: You do not wish to?

23 THE WITNESS: Huh? Excuse me?

1 MR. INGRAM: He does not.

2 MR. BECKER: I have nothing further, Your

3 Honor.

4 CROSS EXAMINATION

5 BY MR. INGRAM:

6 Q Afternoon, Mr. Mason. How are you?

7 A How's it going?

8 Q You first meet Donna Roberts back in the fall of
9 2001 at the Greyhound bus station?

10 A It was like in November, yes.

11 Q And you're using public transportation at that time;
12 am I correct?

13 A Yes, sir.

14 Q And that's because your license was suspended?

15 A Yes, sir.

16 Q Was your license suspended as a result of a failure
17 to pay a fine?

18 A Yes, sir. I wasn't working at that time. I was on
19 my way payin' that fine and I thought because I was
20 incarcerated that it would be gettin' taken care of, but it
21 didn't.

22 Q Okay. But your license was suspended because you
23 had not paid a fine?

1 A Yes.

2 Q And you go to the Greyhound bus station to purchase
3 a ticket to go to Cleveland?

4 A Yes.

5 Q To see your family?

6 A Yes.

7 Q And she strikes up a conversation with you?

8 A No. I strikes up a conversation with her.

9 Q Well --

10 A Because I noticed the picture. And she was writing.

11 I noticed the picture and I said, "Oh, he must be in

12 Belmont."

13 She didn't strike it with me. I struck it up with
14 her.

15 Q Okay. Well, at some point that day, did she tell
16 you that you were so cute?

17 A No. She -- yeah. She said that. I wouldn't --

18 Q Did she tell you that you were so cute?

19 A Yeah. She said I was cute, yeah.

20 Q And that's about the same time you see this
21 photograph?

22 A No. She says I was cute afterwards, before -- after
23 all that.

1 Q Okay. Well, when you look at this photograph, you
2 recognize the background of the photograph as the Belmont
3 Correctional Facility?

4 A Yeah.

5 Q Well, Belmont, were you in the Belmont Correctional
6 Facility?

7 A Yes, I was.

8 Q And Belmont only takes felons; am I correct?

9 A Yes, they do.

10 Q So how many felonies you been convicted of in the
11 last ten years?

12 A Oh, in the last ten years of my life, I've been
13 locked up three times. I have three numbers.

14 Q Okay. What felonies have you pled to or been
15 convicted of?

16 A Well, I've been convicted of when I seen my parole
17 officer back in '99.

18 Q Is that the escape charge?

19 A Yes.

20 Q You were on parole for another felony?

21 A No.

22 Q You were on parole for a misdemeanor?

23 A That's not a misdemeanor. That's a felony because

1 I --

2 Q Escape?

3 A Escape. That's a felony.

4 Q I you thought you got charged with escape for
5 failure to report to your parole officer?

6 A That's the same thing, sir.

7 Q So you have two escapes?

8 A One escape.

9 Q What got you put on parole the first time?

10 A Back in the day, I was living in Cleveland. I was
11 hangin' around the wrong crowd. I was selling drugs.

12 Q You were selling drugs?

13 A Yes, I was.

14 Q What kind of drugs were you selling?

15 A I was selling crack cocaine.

16 Q And is that what got you sent to Belmont the first
17 time?

18 A No. The first time I got locked up was in Grafton.
19 It was in Grafton, Lorain. I was real young.

20 Q And what got you, you had to be 18 or you don't go
21 to Grafton; right?

22 A Yeah. I was like 25, 24.

23 Q What got you sent to Grafton that time?

1 A My very first time, I was selling drugs. That was
2 my first time.

3 Q The second time was selling drugs?

4 A The second time was aggravated assault.

5 Q And then the third time?

6 A The third time was failing to see my parole officer.

7 Q So while you and Donna are in the Greyhound bus
8 station, she's writing a letter to Nate; is that right?

9 A I guess so. That's what she was writin'. She had
10 his picture beside the letter.

11 Q So at the same time she's writing the letter to
12 Nate, she's fixin' up a date with you for 5:00 that day when
13 work is over?

14 A Yes, sir. Not that day because I was going to
15 Cleveland that day. When I got back from Cleveland, we set
16 up that thing. When I got back, we set up an appointment
17 where we were gonna hook up. When I got back, she was there,
18 and that's when we started hookin' up with each other.

19 Q Was that the same day or a different day?

20 A A different day.

21 Q How many days later?

22 A About two days.

23 Q And is that the occasion that she takes you to her

1 home?

2 A Yeah, she do. We rode around for a minute before
3 she took me there because she smoked a fat joint, a couple of
4 fat joints, and then she rode to her house.

5 Q And while you are with her, she tells you that her
6 boyfriend is Nate Jackson; right?

7 A She asked me did I know him because I was in
8 Belmont. I told her no. I asked her his name. She told me
9 his name. I told her I didn't know him.

10 Q She told you his name?

11 A She asked -- yeah. She told me his name because she
12 asked me did I know him. I told her I didn't know him.
13 Because I was down there. I wasn't trying to associate with
14 a lot of people down there.

15 Q Did she indicate to you that that was her boyfriend?

16 A Yes, she did. She said that was her little lover on
17 the side. And I asked her was she married. And she's like,
18 "Yeah."

19 I said, "What you doing with a boyfriend on the
20 side?" Flat out. Like that.

21 She's like, "Well, my husband don't take, don't
22 satisfy my needs."

23 Q Did she tell you she was separated?

1 A Yeah. Something like that.

2 Q That her and her husband had separate bedrooms?

3 A Yeah.

4 Q So while she's telling you that she had separate
5 bedrooms with her husband and she loves Nate Jackson, she's
6 performing fellatio on you on the couch?

7 A I guess I remind her of Nate. That's what it was.
8 You know what I'm saying? I think we favored or whatever in
9 certain ways and that's why, that's what made her really like
10 me because I guess I reminded her of him a little bit.

11 Q Well, would you agree that regardless of her
12 feelings about Nate, whatever those feelings were, they
13 weren't strong enough to stop her from throwing herself right
14 at your feet?

15 A True.

16 Q Isn't that what you're telling us? She wanted to
17 have sex with you?

18 A Exactly. As soon as I came back, she wanted me.

19 Q Now, you owed a fine at this time; right?

20 A Yeah. I owed a fine.

21 Q Of \$238 or thereabouts?

22 A No. It was \$280 to be exact. It was in east
23 Cleveland.

1 Q \$280?

2 A Yes.

3 Q Did you have to pay that \$280 in order to get your
4 license reinstated?

5 A I paid, I went down to east Cleveland and made a
6 payment plan with them and they dropped the charges because
7 they found out I was in Belmont so they dropped the charges.

8 Q Did you borrow the money from Donna to pay that
9 fine?

10 A I didn't get no money from Donna.

11 Q Did you borrow \$238 from Donna?

12 A I didn't borrow no money from Donna.

13 Q Do you recall talking, giving a tape-recorded
14 statement to Detective Hoolihan from the Warren Police
15 Department and Detective Dillon, this gentleman right here?

16 A Uh-huh.

17 Q On December 13th of 2001?

18 A Yes. I remember talking to them guys.

19 Q And you're telling us under oath that you never told
20 them you borrowed \$238 from Donna Roberts?

21 A She wanted to give me some money for having some sex
22 with her. That was all it was about. It wasn't about me
23 borrowing no money. She really told me, "If you need any

1 money, I will help you out."

2 That's what this lady told me.

3 Q So your position is it wasn't a loan, it was payment
4 for services rendered?

5 A Yeah. She didn't tell me it was no loan because I
6 didn't ask her for nothing. She told me, "I will help you
7 out," because I was talking about my fines. That's why I was
8 taking Greyhound.

9 Q You were telling her about your fines? Did she give
10 you money?

11 A She offered to give me some money. It wasn't no --

12 Q Did you tell them that she, in fact, gave you \$238?

13 A She gave me a hundred and like 80 bucks.

14 Q Do you want me to play the tape where you talk about
15 238?

16 A You can play the tape. It might refresh my memory.

17 MR. INGRAM: Did you guys bring that tape
18 with you?

19 MR. BECKER: Yeah. It's right here.

20 MR. INGRAM: Get it out. I want to use
21 it.

22 MR. BECKER: You have a copy of it, right,
23 or do you want the tape? Oh, we got it. We got it.

1 Q (By Mr. Ingram) Did you use that money to pay your
2 fine?

3 A Yes, I did. Like I say, I went down there to get me
4 a payment plan.

5 Q She ask you to do anything in return for that money?

6 A She wanted me to have sex with her flat out and I
7 wouldn't have sex. She had oral sex on me and she got mad
8 because I wouldn't have sex with her.

9 Q Well, she never asked to you kill her husband, did
10 she?

11 A No way.

12 Q As a matter of fact, she never said anything to you
13 bad about her husband at all, did she?

14 A No way.

15 Q She told you when she gave you the money that money
16 meant nothing to her, didn't she?

17 A She said that money ain't nothin' to her. She had
18 plenty of money. That's what she said. Money don't mean
19 nothin' to her.

20 Q She also told you all the property was in her name?

21 A Yes, she did.

22 Q She ever take you for a haircut?

23 A No, she didn't. The haircut place is right next

1 door to the Greyhound. I just go there and get my hair cut
2 at Final Cut. I still go there to this day.

3 Q Now, you have, as you and I are talking, you filed a
4 lawsuit against Donna for money damages, haven't you?

5 A Yes. I lost my job behind that. I was up under
6 stress because I thought I was gonna get accused for
7 something I didn't do because people do get locked up for
8 something they didn't do lots of time.

9 Q Let's talk for a second because there are actually
10 some ground rules here. If you can answer, fairly and
11 reasonably answer my questions yes or no, you should. The
12 question was have you filed a lawsuit for money damages?

13 A Yes.

14 Q And is that gentleman sitting back there in the blue
15 shirt your lawyer?

16 A Yes, he is.

17 Q That's Mr. Bluedorn. And that lawsuit asks for
18 money damages for some amount in excess of \$25,000?

19 A Yes.

20 Q And how much money do you hope to get?

21 A I don't know how much money I hope to get. I'm
22 letting my lawyer take care of that.

23 Q But you're just hoping it's some sum over \$25,000?

1 A This procedure made me lose my job. I lost my job
2 behind it. It put me in a bad character.

3 Q It's a fact, is it not, that your lawsuit is based
4 on a theory that Donna tried to frame you, that Donna Roberts
5 instigated, instituted and perpetuated the criminal
6 proceedings against you in order to frame you for the murder
7 of Robert Fingerhut?

8 A True.

9 Q Did you come up with that theory on your own or did
10 the police help?

11 A No. I came up with that. After the police told me
12 what was going on, after Detective Dillon and Hoolihan told
13 me what was going on, that she was trying to say I stole her
14 gun and point the finger at me so her and Nate, Mr. Jackson,
15 go in the clear, that's what made me come up with that
16 theory.

17 Q Okay. They gave you the facts and then you put them
18 together to come up with that theory; is that right?

19 A That's all I can think of.

20 Q When were you arrested on this complaint?

21 A Excuse me?

22 Q You were arrested on the complaint Donna filed
23 against you?

1 A Yeah. She put a warrant out for my arrest.

2 Q You were arrested on December 3d?

3 A Yes.

4 Q And as I understand your answers to Mr. Becker, you
5 were unable to make bail so you spent two or three days in
6 jail?

7 A Yes, I did.

8 Q Money's tight; right?

9 A Yeah.

10 Q Hard to come up with money?

11 A Yeah, when you ain't working at the time. I had
12 that money from my mother-in-law. She had got me out the
13 third day.

14 Q You weren't working when you were arrested?

15 A Yes, I was working.

16 Q Okay. So even though you were working, money was
17 tight?

18 A Because that wasn't my pay week.

19 Q Oh. Well, I guess Donna is lucky that you posted
20 bail, isn't she?

21 A Why you say that?

22 Q Well, you're telling us she tried to set you up as a
23 patsy; right?

1 A That's how I feel.

2 Q If you hadn't posted bail, you would have been in
3 jail on December 11th; am I right?

4 A If I hadn't posted bail, I probably would have sat
5 there until I went to court again.

6 Q You were arrested on December 3d; correct?

7 A I don't know practically what time I was arrested,
8 but --

9 Q Well, here. Take a gander at your lawsuit, young
10 man, and you tell me if you allege that you were arrested on
11 December 3d. I'm sorry. I have a copy of that for the
12 prosecuting attorney. Excuse me one minute.

13 A Excuse me. My lawyer have all the copies and
14 everything what day I was arrested and everything. I don't
15 remember everything.

16 Q Here's certified records from Youngstown Municipal
17 Court. You're arrested on December 3d. You want to argue
18 about that date or do you want to concede that date?

19 A I don't want to argue about no date because I know I
20 was arrested. I don't know what exact day I was arrested,
21 but like I said, my lawyer have copies and everything when I
22 was arrested and everything.

23 Q I don't care what your lawyer has copies of. You're

1 telling this jury she tried to set you up for a patsy when,
2 in fact, she had you arrested on December 3d; correct?

3 A Yeah. She did try to set me up for it.

4 Q And she knows you don't have money, doesn't she,
5 because you couldn't pay your fine to get your license
6 reinstated?

7 A No, I could have paid my fines, but I was working at
8 the time. I have other bills. I'm a family man.

9 Q You couldn't pay your fine. Why didn't you pay?

10 A Because I have bills down here. I have a family
11 down here.

12 Q So if you can't come up with money after you're
13 arrested, you stay in jail; correct?

14 A I guess so, but I came up, my mother-in-law got me
15 out.

16 Q Well, is she telepathic? Is she gonna know your
17 mother-in-law is gonna get you out?

18 A I don't know what she know, but I know I called my
19 peoples and they got me out.

20 Q Now when you were questioned by the police on
21 December 13th of 2001, that's Detective Dillon and Detective
22 Hoolihan, you actually go, where, to the Howland Police
23 Department; right?

1 A Excuse me? Say that again.

2 Q Did you go to the Howland Police Department and they
3 questioned you?

4 A Yes, I did.

5 Q And they question you about your whereabouts on
6 December 11th; correct?

7 A Yes, they did.

8 Q And you're married?

9 A Yes, I am.

10 Q And you have kids?

11 A I have kids. I have one son in Cleveland and I have
12 a daughter down here in Warren.

13 Q Does the girl you have down here in Warren, does she
14 live with you and your wife?

15 A Yes.

16 Q And back at this time, you were working Monday
17 through Friday from about 9 to 2?

18 A 9 to 3.

19 Q 9 to 3?

20 A Yes.

21 Q And when they were talking with you, they asked you
22 about your whereabouts on December 11th; do you recall that?

23 A I told 'em I was at the Fiesta. I like to shoot

1 pool a lot.

2 Q What?

3 A I like to shoot pool a lot so I was at the Fiesta
4 shootin' pool.

5 Q Up until about 10:00; right?

6 A About 10:30, 10:00. Go to the house, go to bed,
7 ready to go to work the next day.

8 Q Okay. So when the police asked you where you were
9 at midnight on Tuesday, December 11th, you say that, "I was
10 at home and in bed with my wife"?

11 A Oh, yeah. At that time, I was in bed at the time.

12 Q And as a matter of fact, if I asked you where you
13 were on any given Tuesday when you were working, your answer,
14 at midnight, your answer would be, "At home in bed with my
15 wife;" correct?

16 A Yeah. Because I had to go to work in the morning,
17 true.

18 Q Right. How many Tuesdays would we have to go back
19 in time before your answer would be different?

20 A I don't know how many Tuesdays. I do something
21 different almost every day.

22 Q But you go to work every morning; right?

23 A Exactly.

1 Q So you go to bed at a reasonable hour?

2 A I go to bed no later than 10:30, 11:00.

3 MR. INGRAM: Can I have a moment, Your
4 Honor?

5 THE COURT: Yes.

6 Q (By Mr. Ingram) When Donna presented herself at
7 your place of employment, that didn't make you a happy
8 camper, did it?

9 A No, it didn't. At first, I was happy to see her
10 until she started sticking me with her phone like she wanted
11 to shoot me like, "Mother fucker, you took my gun," and all
12 this and that.

13 I'm like, "What is you talkin' about?"

14 Q And eventually you learned that she had sworn out a
15 warrant for your arrest?

16 A Yeah. Later on that, later on that, later on the
17 next day when the detectives come up there.

18 Q And right around that same time, you placed a
19 telephone call to Robert Fingerhut, did you not?

20 A Oh, yeah. I called her husband at the Greyhound
21 station and told him that she was threatenin' me and talking
22 about some gun or whatever and talkin' about I took some
23 money or whatever. Yes, I did call her husband, but I didn't

1 get --

2 Q And you also told her husband that, "Donna is
3 cheating on you"?

4 A Oh, I didn't tell her husband nothing like that.

5 MR. INGRAM: Okay. Your Honor, could we
6 have a recess so I can get this tape set up?

7 THE COURT: Yes. How much time do you
8 need?

9 MR. INGRAM: Probably five, ten minutes.

10 THE COURT: Let's take ten minutes. You
11 are not to discuss anything about the case until you return.
12 You are not to form an opinion.

13 (Whereupon, a recess was had commencing at 3:17 p.m. and
14 concluding at 3:35 p.m.)

15 THE COURT: Mr. Ingram.

16 MR. INGRAM: Thank you, Your Honor.

17 Q (By Mr. Ingram) Mr. Mason, do you recall having a
18 conversation with Detective Hoolihan and Detective Dillon
19 back on December 13th, 2001 at approximately 2:35 in the
20 afternoon?

21 A Yes.

22 Q I'm gonna play for you and hopefully the microphone
23 will pick it up so that the jury can hear a portion of your

1 conversation with those detectives on that date.

2 (Whereupon, counsel played a portion of an audio tape for the
3 witness.)

4 Q (By Mr. Ingram) I asked you previously if you had
5 told Mr. Fingerhut that Donna was cheating on him and you
6 said no.

7 A Well, that would have been around --

8 Q Sir, sir, answer my question, please. Did that tape
9 refresh your recollection?

10 A Yes. Yes, it does.

11 Q Did you tell Mr. Fingerhut that Donna was cheating
12 on him?

13 A Yeah. It was on the recording. I must have said
14 something. I was mad at the time.

15 Q So when you said no, that was an incorrect answer
16 under oath?

17 A I didn't remember all that. You know what I'm
18 sayin'?

19 Q You didn't remember all that?

20 A I was so mad that day.

21 Q You didn't say you didn't remember what you said to
22 Mr. Fingerhut, did you? You said you had not told him that
23 Donna was cheating on him?

1 A Like I said, I told him, I talked to him on the
2 phone. I don't remember the conversation I said because I
3 was mad at the time because she came into my job and kept on
4 harassing me.

5 Q Okay. So now -- let's be clear about this. Now you
6 remember calling him and telling him that Donna was cheating
7 on him?

8 A Yeah.

9 Q And you told the police that you made that telephone
10 call to Mr. Fingerhut about a month before the interview. So
11 the interview was on December 13th. And if it's a month
12 before, that's about the middle of November; is that right?

13 A I guess so. I don't remember. I can't remember
14 that far back. That's like a year ago.

15 Q You remembered far back when you were talking to the
16 gentlemen from the prosecution here.

17 A I remember the discussions I had with the
18 detectives, but I don't know the exact words I was saying
19 then because I was mad at the time when I was talking to them
20 telling them about the situations that happened at my job.

21 Q Do you have a selective recollection?

22 A What?

23 Q Do you have, can you only remember what you want to

1 remember?

2 A Ain't about what I want to remember. I just knew I
3 was pissed off at the time and I was just, just telling the
4 detectives what was on my mind right when I had done.

5 Q Okay. You were pissed off so you called
6 Mr. Fingerhut to tell Mr. Fingerhut that Donna was cheating
7 on him?

8 A True. It was on the recorder. Yeah. I must have
9 started that.

10 Q Well, if we had never got this recording, would you
11 have ever told us the truth?

12 A It ain't about me telling the truth.

13 Q It's not about you telling the truth? Did you take
14 an oath?

15 A Excuse me?

16 Q Did you take an oath to tell the truth?

17 A Yes, I did, but I couldn't remember.

18 Q Let me tell you something, sir. While you are here,
19 everything is about you telling the truth.

20 A I am telling the truth about everything, but I
21 couldn't remember everything.

22 Q And when you said you had not called Mr. Fingerhut,
23 that simply was not the truth?

1 A I said I called Mr. Fingerhut, but I couldn't recall
2 all the words, all the conversations that we had though. I
3 did say I called him.

4 Q You said you called him, but you said you had not
5 said anything about Donna cheating. That was not the truth,
6 was it?

7 A It's the truth. It's on the recorder. The tape is
8 the truth.

9 Q We now know it's the truth. The question is, your
10 previous testimony under oath was not the truth?

11 A Well, it's the truth. I know I didn't steal no gun.
12 I didn't murder nobody.

13 Q I agree with that. You want to go back and talk
14 about the \$220?

15 A You can record, we can go rewind that and go back
16 and talk about it.

17 Q Well, do we have to?

18 A You don't have to.

19 Q She gave you \$220, didn't she?

20 A She gave me some money.

21 Q About \$220?

22 A I would say about \$180. It was about \$180.

23 MR. INGRAM: I have no further questions.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MR. BECKER:

4 Q Mr. Mason, who took Donna Roberts' gun?

5 A I don't know.

6 Q Did you take Donna Roberts' gun?

7 A I didn't take no gun.

8 Q And when were you accused of taking Donna Roberts'
9 gun? When were you accused of doing it? Approximately.

10 A (No response.)

11 Q Well, let me withdraw that question.

12 Let me ask you this. How long after you rebuffed
13 her sexual advances to you were you accused of taking her
14 gun?

15 A I can't remember. I think it was about three to
16 four days afterwards. Somethin' like that.

17 Q And who was responsible for you being charged for
18 taking a firearm in December of 2001?

19 A She was responsible for saying I took her gun.

20 MR. BECKER: I have nothing further.

21 RECROSS EXAMINATION

22 BY MR. INGRAM:

23 Q Donna Roberts is responsible for getting you thrown

1 in jail on December 3d, 2001?

2 A Yes, because she put a warrant out for my arrest
3 that I stole a gun from her.

4 Q I'm gonna ask you this question again. Try to
5 answer my question. She's responsible for getting you thrown
6 in jail on December 3d, 2001. Yes or no?

7 A The day I went to jail, she's responsible. Yes, she
8 is responsible for that.

9 Q And you went to jail before December 11th, 2001,
10 didn't you?

11 A Yeah, I went to jail before -- you say the 11th?
12 Like I say, I can't remember the exact day or whatever
13 because it's been almost a year ago, but --

14 Q Well, you wouldn't file a false or frivolous
15 lawsuit, would you?

16 A Yes, I filed a lawsuit.

17 Q Yes, you would?

18 A Yes, I filed a lawsuit.

19 Q I didn't ask you if you filed one. I said you
20 wouldn't file a false and frivolous one. That's a false one.

21 A No, I didn't file no false --

22 Q Read to the jury paragraph five.

23 A Which one?

1 Q Paragraph five.

2 A "On or about December 3d, 2001, the Warren Police
3 arrested plaintiff, Santiago Mason, pursuant to warrant
4 issued upon defense. The plaintiff was taken to and confined
5 in the Trumbull County Jail for two days before release on
6 bond answering to the charges before Warren Municipal Court."

7 Q The truth is, you're arrested on December 3d;
8 correct?

9 A The truth is, I don't know exactly what day I was
10 arrested, but I know I was put in jail.

11 Q If your lawyer said it was December 3d, are you
12 gonna tell him he's wrong?

13 A If my lawyer got the paper that show me the day I
14 was in jail, it's right. If it's on this paper, it's right
15 then.

16 Q Okay. It says December 3d. So it's right?

17 A Yeah.

18 Q And that's before December 11th, isn't it?

19 A Exactly.

20 MR. INGRAM: No further questions.

21 THE COURT: Redirect?

22 * * *

23

FURTHER REDIRECT EXAMINATION

BY MR. BECKER:

Q Mr. Mason, have you ever heard of a typographical error?

A No.

Q All right. Do you think that sometimes people put the wrong dates in documents?

A Mistakes can happens.

Q Okay. Could you have been arrested on December 13th rather than December 3d?

A Like I said, I don't know what day I got arrested on because I don't remember.

Q So we need to check the Trumbull County records --

A Yes.

Q -- to see when exactly you were arrested in December?

A Yes.

Q Whether it was before December 11th or after December 11th?

A Yes.

Q Correct?

A Because I don't know exactly what day. I know I was in jail. That's all I know. I went to jail for something I

1 didn't do.

2 Q And you don't know the exact date, even regardless
3 of what it says in that lawsuit?

4 A Exactly.

5 Q That may be, someone may have forgot to put the one
6 in before the three?

7 A I don't know.

8 MR. BECKER: I have nothing further.

9 MR. INGRAM: Chris, where is that, those
10 certified records?

11 MR. BECKER: Right there.

12 **FURTHER RECROSS EXAMINATION**

13 **BY MR. INGRAM:**

14 Q Regardless of whether your lawyer made a
15 typographical error, she comes to your place of employment
16 with the cell phone and calls the police well before December
17 11th; correct?

18 A I don't know the exact date it was, but I know she
19 came to my job.

20 Q Well, it was the same day that you told the police
21 you called Mr. Fingerhut; is that correct?

22 A Like I said, I don't know the exact date that I
23 called and what exact date that I went to jail, but I know I

1 was jail and I know I called her husband. I'm not
2 remembering, I don't remember dates. I know it was cold
3 outside.

4 Q When Dillon here and Hoolihan came to talk to you,
5 were you home or were you in jail?

6 A I was at work when they came and talked to me.

7 Q Did they come to talk to you on December 13th, 2001?

8 A I don't recall. I can't remember what date it was,
9 sir.

10 Q Okay.

11 A I just know that they came up to my job and told me
12 to come up to Howland Police station.

13 MR. INGRAM: Your Honor, I know I'm gonna
14 aggravate, sorry Ladies and Gentlemen, I'm gonna try the
15 jury's patience. I have to rewind this for a second.

16 MR. BECKER: I'm sorry?

17 MR. INGRAM: I'm rewinding.

18 THE COURT: Is there a transcript of that
19 tape?

20 MR. INGRAM: I don't have one.

21 MR. BECKER: No. There is no transcript
22 of that tape.

23 MR. INGRAM: I guess it would be real

1 simple if Detective Dillon could tell us what day the
2 interview took place.

3 MR. BECKER: Do you want to call him for
4 limited purposes?

5 MR. INGRAM: Yes.

6 DETECTIVE FRANK DILLON: The 13th.

7 MR. BECKER: Okay. Are you done with
8 Mr. Mason?

9 MR. INGRAM: Yes.

10 THE WITNESS: You done with me?

11 THE COURT: You're excused then. Thank
12 you very much.

13 DEPUTY GARY BACON: Is he excused or just
14 temporarily?

15 MR. INGRAM: Temporarily. I may have more
16 questions.

17 MR. BECKER: Just wait in the hallway.

18 THE WITNESS: All right.

19 MR. BECKER: Your Honor, I guess that the
20 defense has requested that Detective Sergeant Dillon be
21 called for the limited purpose, and we have no objection to
22 him being taken out of order, for the limited purpose of --

23 MR. INGRAM: Establishing the date of the

1 interview.

2 MR. BECKER: -- the day that Mr. Mason was
3 arrested.

4 THE COURT: This should be pretty easy to
5 clear up as to whether it was the 3d or the 13th.

6 WHEREUPON,

7 FRANK DILLON,

8 having been first duly sworn, according to law, was examined
9 and testified as follows:

10 CROSS EXAMINATION

11 BY MR. INGRAM:

12 Q When did the Mason interview take place?

13 THE COURT: Okay. Let me stop you just
14 one minute. This is for purposes of cross examination at
15 this point.

16 MR. BECKER: I don't -- yeah.

17 MR. INGRAM: It doesn't matter.

18 MR. BECKER: We have no objection to
19 Mr. Ingram leading off the questioning of this witness at
20 this time.

21 THE COURT: Okay. Fair enough. Go ahead.

22 A According to my report --

23 MR. INGRAM: I'll withdraw that.

1 Q (By Mr. Ingram) State your name first. I'm sorry.

2 A Sergeant Frank Dillon.

3 Q When did the interview take place?

4 A According to my report, December 13th, 2001.

5 Q Where did you get Mr. Mason from? Where did you
6 find him?

7 A He was at work, Vista Windows.

8 Q Did you come to learn of a complaint filed against
9 Mr. Mason for theft of a gun?

10 A Yes, sir.

11 Q And was that complaint filed on November 28th, 2001?

12 A I believe so.

13 MR. INGRAM: I have no further questions.

14 MR. BECKER: May I ask a few questions?

15 THE COURT: Yes.

16 DIRECT EXAMINATION

17 BY MR. BECKER:

18 Q Detective Sergeant Dillon, can you tell this jury
19 why on December 13th -- well, first of all, Mr. Fingerhut was
20 murdered on what date?

21 A December 11th.

22 Q December 13th, 2001, can you tell this jury why
23 Santiago Mason was questioned while you were in the middle of

1 a homicide investigation?

2 A I believe Donna Roberts told us of an incident
3 involving the subject stealing a weapon from her when we were
4 trying to account for her guns.

5 Q And would that weapon have been or do you recall the
6 caliber or type of weapon that she had allegedly had stolen?

7 A I want to say a Taurus .38. I may be wrong.

8 Q Okay. Would it have been Smith & Wesson perhaps?

9 MR. INGRAM: Stipulated.

10 A Perhaps.

11 Q It's been stipulated that it was a Smith & Wesson
12 .38 that was alleged to have been stolen?

13 A Yes, sir.

14 Q Was there an allegation that perhaps he may be a
15 suspect in Mr. Fingerhut's homicide? Is that why you spoke
16 to him?

17 A Yes, sir. And to track, to try and track the gun
18 down as possibly being involved in the incident.

19 MR. BECKER: I have nothing further.

20 RECROSS EXAMINATION

21 BY MR. INGRAM:

22 Q The complaint is filed on November 28th and the
23 warrant for Mr. Mason's arrest is issued November 28th of

1 2001; correct?

2 A I don't believe I ever saw the warrant.

3 MR. BECKER: We'll stipulate to that if
4 you want.

5 MR. INGRAM: Okay.

6 MR. BECKER: Do you want to make it a
7 joint exhibit because that's the --

8 THE COURT: What is the stipulation?

9 MR. INGRAM: The stipulation is that
10 the --

11 MR. BECKER: I don't know how many pages
12 that is.

13 MR. INGRAM: Three.

14 MR. BECKER: Do you want to make it a
15 joint exhibit?

16 MR. INGRAM: We'll stipulate that the
17 complaint charging Mr. Mason with theft of a Smith & Wesson
18 .38 was filed by Donna Roberts on November 28th of 2001 and
19 on that date a warrant was issued for Mr. Mason's arrest.

20 THE COURT: Okay. That's agreed by both
21 sides.

22 MR. BECKER: And I don't know if you want
23 to make it, as in terms of the date, the actual date of the

1 arrest.

2 MR. INGRAM: I want some clarification on
3 that.

4 MR. BECKER: Okay. Okay. I have nothing
5 further of Officer Dillon.

6 MR. INGRAM: I have nothing further.

7 THE COURT: Okay. Fine. Thank you, sir.

8 MR. BECKER: Do you want Mr. Mason back
9 in?

10 MR. INGRAM: No.

11 THE COURT: Are you done?

12 MR. INGRAM: He's released.

13 THE COURT: Okay. Fair enough. You may
14 advise him of that.

15 MR. BECKER: Your Honor, at this time, we
16 have no further witnesses for the day. It's my understanding
17 that we are going to break. Due to some problems, we're not
18 going to be back until Tuesday so it's my understanding that
19 -- well, wait. Oh, we do have one, we do have two things
20 that we would like to read into the record in the presence of
21 the jury.

22 Your Honor, there are two stipulations that the
23 parties have agreed to formally. The first is that the

1 parties agree with reference to Kathryn Thomas's testimony
2 yesterday that her business records which are kept in the
3 regular course of business would establish that Donna M.
4 Roberts, the defendant, and Robert Fingerhut reported to
5 State Farm Insurance that the primary driver of the 2001
6 silver mist Chrysler 300M was Donna M. Roberts and the
7 principle driver of the 2000 inferno red Chrysler 300M was
8 Robert Fingerhut.

9 Additionally, there is a stipulation that was
10 previously filed that the parties would stipulate that
11 Exhibits 271-D-1 through 271-D-139 inclusive are authentic
12 and were written by the defendant, Donna Roberts.

13 The parties further stipulate that Exhibits 272-N,
14 as in Norman, 1 through 273-N, as in Norman, 143 are
15 authentic and were written by Nathaniel Jackson.

16 We have those two stipulations.

17 THE COURT: Okay. That's stipulated by
18 both sides. The jury will accept what he has just read as
19 proven facts then.

20 Ladies and Gentlemen, because of conflicts in
21 schedules, we will not be here tomorrow, nor Monday. So you
22 are to return Tuesday morning. We will continue with the
23 State's case at that time.

1 I would again remind you that over the weekend, you
2 are not to discuss with anyone or allow anyone one to talk
3 with you about this case or any detail of it. You are not to
4 read anything in the newspaper, watch anything on TV and you
5 should remember the admonition that I read at the very
6 beginning of this as to what that covers, which is keep your
7 own counsel until you return. This case should not affect
8 your lives in any way between now and then as far as any
9 other information that you might come in contact with.
10 You're duty-bound to make sure that that doesn't happen.

11 I will note to you that the newspapers have been
12 following this case, as well as the TV stations. That's not
13 unusual. It happens in every case of this type. But all the
14 more reason that you should be cautious when you're watching
15 TV or whatever.

16 There's always a lot of talk among lawyers about how
17 seriously the jurors take the admonition to do your job the
18 way we ask you to do it. And there's a great diversity.
19 Some are quite cynical about it. My personal belief is that
20 I think that jurors really try because jurors, in my
21 experience, take their duties most seriously. And our system
22 will not work for very long if that isn't the case. So I am
23 confident that this jury, as other juries, will follow the

1 instruction that I've given you.

2 Enough said about that. May you all have a very
3 nice and enjoyable weekend. Let's hope we get some sunshine.

4 Yes, ma'am?

5 JUROR 11: You said 9:00 in the morning on
6 Tuesday?

7 THE COURT: 9:00 in the morning on
8 Tuesday. Right. Thank you now.

9 (At 3:53 p.m., the jury was excused and the following
10 proceedings occurred in open court with counsel and the
11 defendant present.)

12 THE COURT: The question that was put to
13 me by Juror 11 with agreement of counsel was does a
14 stipulation mean that we have to accept it as being true?
15 And I told her yes, that's true. A stipulation, there's no
16 question of fact because both parties admit to it. Okay?

17 MR. BECKER: (Nods head.)

18 MR. BAILEY: I think the Court had already
19 listed that in the preliminary instructions.

20 THE COURT: I did. I went over that in
21 some detail I thought.

22 (At 3:55 p.m., court was adjourned to Tuesday, May 20, 2003.)

23 (Note: For all further proceedings in this matter, please

1 refer to the transcripts prepared by Mary Ann Mills.)

2 * * *

3
4 REPORTER'S CERTIFICATE

5
6 This is to certify the foregoing represents a true and
7 correct copy of the proceedings had in the aforementioned
8 cause as reflected by the stenotype notes taken by me on the
9 same.

10
11
12
13
14 1-7-04

15 
16 _____
17 Lori J. Rittwage, RPR
18 Official Court Reporter
19
20
21
22
23

5488

1 IN THE COURT OF COMMON PLEAS
2 TRUMBULL COUNTY, OHIO
3 TRIAL COURT CASE NO. 01-CR-793
4 SUPREME COURT OF OHIO CASE NO. 03-1441

4 STATE OF OHIO)
5 Plaintiff)
6 - vs -)
7 DONNA M. ROBERTS)
8 Defendant)
9)
10)
11)
12)
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15)
16)
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22)

 VOLUME XXVI
 STATE'S WITNESSES

 BE IT REMEMBERED, that on Tuesday, May 20,
2003, these proceedings came on to be heard before
one of the Judges of this Court, John M. Stuard,
in Courtroom No. 2, on High Street, Warren, Ohio,
before the case heretofore filed herein.

Mary Ann Mills, RPR
Official Court Reporter
Trumbull County, Ohio

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A P P E A R A N C E S

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I N D E X

VOLUME XXVI:

(Tuesday, May 20, 2003 & Wednesday, May 21,
2003)

STATE'S WITNESSES:

Jim McCoy

Direct Examination by Mr. Bailey 5500

Cross Examination by Mr. Ingram 5510

James Campbell

Direct Examination by Mr. Bailey 5514

Cross Examination by Mr. Ingram 5522

Redirect Examination by Mr. Bailey 5525

Agent Ed Lulla

Direct Examination by Mr. Bailey 5526

Cross Examination by Mr. Juhasz 5556

Dr. Humphrey Germaniuk

Direct Examination by Mr. Becker 5572

Cross Examination by Mr. Juhasz 5603

Redirect Examination by Mr. Becker 5603

Recross Examination by Mr. Juhasz 5604

Sgt. Frank Dillon

Direct Examination by Mr. Becker 5605

Cross Examination by Mr. Juhasz 5672

Dale Laux

Direct Examination by Mr. Becker 5715

Cross Examination by Mr. Juhasz 5742

1 Tuesday, May 20, 2003; In Open Court at 9:25 a.m.:

2 (Juror No. 109, Casey Kelly, entered the Courtroom.)

3 THE COURT: What is your name?

4 MS. KELLY: Casey Kelly.

5 THE COURT: I understand from the
6 note from your doctor, James C. Haun, M.D., of
7 Warren, Ohio, that you are having trouble, being
8 treated for your back, is that correct?

9 MS. KELLY: Right.

10 THE COURT: He's recommending that
11 you be removed from Jury duty. I assume that you
12 have been to see him for treatment and relayed to
13 him that you are having problems sitting here, is
14 that correct?

15 MS. KELLY: The main problem is he
16 told me that I have a pinched nerve in my back and
17 I can't not take my pain medicine. I don't feel
18 like I should be making this kind of important
19 decision while I am under the influence of a
20 narcotic. I think it is too important a decision
21 to make, and the fact that I can't sit for very
22 long because it is very painful.

1 THE COURT: You are taking pretty
2 strong pain medication, is that it?

3 MS. KELLY: Yes.

4 THE COURT: The State have any
5 questions?

6 MR. BAILEY: No questions.

7 THE COURT: Defense?

8 MR. INGRAM: No. I would like the
9 record to reflect that as we're talking with Miss
10 Kelly, she's obviously in physical distress. You
11 can look at her and tell that her back is hurting
12 and that it is necessary for her to take
13 medication. We have no objection to her excusal.

14 MR. BAILEY: We have no objection.

15 THE COURT: You will be removed for
16 cause then. Thank you for your participation.
17 Good luck to you.

18 MR. BECKER: There's one other
19 matter that we would like to discuss. Apparently
20 on Friday, Mr. Juhasz had filed a motion in
21 limine -- I'm sorry, filed a Dauber motion on
22 Friday. I think that motion was directed at most

1 of the State's experts from BCI, but particularly a
2 doctor Humphrey Germaniuk regarding some testimony
3 that he had given in the previous trial, in Nate
4 Jackson's trial, case number 01-CR-793. And that
5 testimony was basically speculative in terms of the
6 position of where Mr. Fingerhut was at when he was
7 shot. We spoke briefly on the phone yesterday. I
8 have agreed that I'll not ask him on direct
9 examination any of these hypotheticals. I'm
10 assuming Mr. Juhasz won't and I won't have to worry
11 about redirecting him on anything. I think that
12 will cover the main problem with the motion,
13 because that was previous testimony.

14 THE COURT: Is that the testimony
15 where he said he had his hands up?

16 MR. BECKER: Yes, Sir.

17 MR. JUHASZ: Then on cross
18 examination, it was just as likely that two or
19 three other hypotheticals were just as likely. The
20 thrust of the motion is that he can not say more
21 likely than not or whatever the Supreme Court is
22 requiring these days. Mr. Becker and I have agreed

1 that we'll simply stay away from that testimony,
2 and with that --

3 MR. BECKER: I personally spoke to
4 Dr. Germaniuk yesterday and advised him that he's
5 not to answer or he's not to speculate as to the
6 position of the deceased in this case. He's here,
7 I don't know if you want to bring him in and put it
8 on the record. Do you want me to call him?

9 THE COURT: I think if you --
10 (OFF THE RECORD)

11 MR. BECKER: Just for the record, I
12 want to note this, because the only reason I note
13 this, I don't think it will happen, but it happened
14 to me one time and it caused a mistrial and I was
15 99 percent done with the trial. The motion to
16 suppress, which we stipulated to which was the
17 video taped statement of Miss Roberts on either
18 December 20th or 21st, we have by agreement decided
19 not to use that. She had retained Mr. Ingram and
20 Mr. Juhasz at that point and indicated, I think in
21 the first few moments of the video tape that she
22 did not want to speak to the officers without their

1 presence or words to that effect. I have handed a
2 letter to Mr. Dillon and Chief Monroe, we're not
3 going to call Captain Bacon on that, because he was
4 involved in that statement, but they have been
5 advised and admonished to stay clear of that
6 statement and to not even mention that statement,
7 both by letter that I personally delivered to them
8 and that is pursuant to the stipulation. I bring
9 that up because I was in a Jury trial one time and
10 the former Mr. Philamena -- and when this
11 individual said something she was not supposed to
12 say, I was told I purposely did it because
13 Mr. Philamena was a great attorney. I just wanted
14 to place on the record that I did admonish them
15 both verbally and I gave them a written letter
16 yesterday advising them that they are not to
17 mention that statement that was video taped for
18 which there was a motion to suppress and a
19 stipulation.

20 THE COURT: I just got your motion
21 here, so I haven't had a chance to go through the
22 whole thing, but there's no other arguments -- you

1 have quite a few experts that testify. Is there
2 any other problem?

3 MR. JUHASZ: In other trials, I
4 might be more concerned. In this particular trial,
5 because of the Defense strategy, I'm not concerned
6 with those. I'm satisfied with the agreement that
7 that fully disposes of the motion in limine.

8 There are two other things. One is that
9 Mr. Bailey and I had a conversation this morning,
10 and he's going to with Ed Lulla from BCI and James
11 Campbell from the Howland Police Department --
12 Mr. Bailey is going to show a number of photographs
13 on the overhead. Although those photographs have
14 not been admitted and I have told him that it is my
15 position that he does not need to move for
16 admission at this point in time. None of those
17 photographs are objectionable by us or offensive to
18 us --

19 MR. BAILEY: There's one that I'm
20 not going to display to the Jury. It is a chest
21 wound. I am having him identify it, but not
22 display it.

1 THE COURT: I assume the State is
2 not going to enter a series of repetitions. We
3 have already gone through that in that other trial.

4 MR. BECKER: For the record, I
5 believe we have -- the State plans on presenting
6 essentially the same photographs that were
7 introduced in Jackson's trial. I don't believe any
8 of them are repetitive. I would consider only one
9 of them -- well, there's just a few of the wounds
10 and injuries to Mr. Fingerhut. But those are
11 available to Defense counsel. These are the same
12 Exhibits that were used before. I don't know if
13 you want to take a look at those before
14 Dr. Germaniuk testifies.

15 MR. BAILEY: I'm going to show him
16 the same photos he saw before with Mr. Lulla. It
17 should go fairly rapidly. I'll show him the whole
18 packet first, that they are accurate and he took
19 them. I'll go through each number, which somebody
20 else didn't do before, looking at the transcript.
21 I imagine that will go fairly fast and when we
22 actually get to what we're going to move to admit,

1 we may be more selective at that point.

2 MR. BECKER: The photographs that I
3 have Dr. Germaniuk testifying to, I am assuming
4 there's probably going to be objections to them,
5 but they are very, very few that look like they are
6 actually -- basically looks to me like five or half
7 a dozen showing injuries on his body, and I would
8 say two of them --

9 THE COURT: The point is, we usually
10 review them before they are actually presented.
11 You can't show them and say, "Well, I'm not going
12 to let those in."

13 MR. BECKER: I'm not going to show
14 these on the overhead. I'm going to show these to
15 Dr. Germaniuk. As opposed to some other trials, we
16 don't have 50 gruesome photographs and we're going
17 to withdraw 49 of them. We have five or six that
18 are required to show the injuries and cause of
19 death. I think they are all acceptable. They were
20 all admitted within the last trial. I think there
21 were some withdrawn in the previous trial. Rather
22 than --

1 THE COURT: These will not be shown
2 on the screen?

3 MR. BECKER: No. Just with
4 Dr. Germaniuk.

5 THE COURT: Mr. Ingram?

6 MR. INGRAM: The issue that I am
7 about to address, I'm not so sure that it is even a
8 problem, but I am compelled to note it at this
9 point in time. As Mr. Becker stated, we filed a
10 motion to suppress the video taped statement and he
11 has notified his witnesses not to reference that
12 video taped statement. After the video taped
13 statement, there was an agreement to make a
14 telephone call, where Donna would make a telephone
15 call.

16 MR. BECKER: I'll not get into that.
17 For the record, I think basically what I advised
18 them, anything that happened after her arrest on
19 the 21st, December 21, 2001 is not to be discussed.
20 In terms of anything she may have said, because she
21 was represented by counsel and she did state on the
22 video portion that she did not want to speak

1 without counsel present. There was a phone call
2 made. We'll not get into that, because I don't
3 think we can.

4 MR. INGRAM: My understanding of the
5 law on this issue is that when a motion to suppress
6 is granted, the State is precluded from admitting
7 evidence. If the Defense then chooses to admit
8 that evidence, the Defense is free to do it. I'm
9 just being open here. We actually may elicit
10 testimony that we made the telephone call, but only
11 the telephone call.

12 (OFF THE RECORD)

13 (Jury brought into Courtroom at 9:35 a.m.)

14 THE COURT: The Jury has lost one of
15 its members. Juror number 11 has been excused for
16 cause. So alternate number one, you are a member
17 of the Jury. Would you please take the chair up
18 there? This seems to invariably happen when you
19 have a case of this duration. You folks don't have
20 to move your chairs now, but you will still remain
21 in the same order. We have a period of a little
22 bit longer than a week in here. We'll be going

5500

1 today, tomorrow, half a day Thursday and Friday,
2 then we'll be off next Monday, being Memorial Day.
3 Is the State ready to proceed?

4 MR. BAILEY: The State calls Jim
5 McCoy.

6 JIM McCOY
7 being duly sworn according to law, on his oath,
8 testified as follows:

9 DIRECT EXAMINATION BY MR. BAILEY:

10 Q. Good morning. Would you tell the Court and
11 Jury your full name?

12 A. Jimmie McCoy.

13 Q. Where do you live?

14 A. Cleveland, Ohio.

15 Q. And can you tell us what you do for a living?

16 A. I am a Greyhound bus driver.

17 Q. And how long have you been so employed?

18 A. This past April is 24 years.

19 Q. Your duties and responsibilities as a
20 Greyhound bus driver?

21 A. I drive from Cleveland to New York City and
22 Cleveland to Washington D.C. and I also

1 train drivers.

2 Q. And did you just get back from a training
3 trip?

4 A. Yes, I did.

5 Q. Back in December of 2001, what was your run at
6 that time, what schedule did you work?

7 A. I ran from Cleveland to Pittsburgh, Pittsburgh
8 to Erie, PA.

9 Q. And did you have occasion during that time to
10 make stops at the Greyhound Youngstown
11 and Warren bus terminals?

12 A. Yes.

13 Q. I'm going to direct your attention back to
14 December 11, 2001, a Tuesday, about 4:30
15 in the afternoon. Do you know where you
16 were about that time?

17 A. About 4:30, at the Youngstown bus station.

18 Q. Were you on a pretty tight schedule at that
19 time?

20 A. Yes.

21 Q. What was your schedule?

22 A. I am due in Youngstown at 4:35 and out of

1 Youngstown at 4:45.

2 Q. And where do you go from there?

3 A. To Warren station.

4 Q. And how long does it take you to get to the
5 Warren station?

6 A. Approximately 30 minutes.

7 Q. Now I'm going to direct your attention to 4:30
8 that afternoon, you said you were working
9 that day?

10 A. Yes.

11 Q. And you got to the Youngstown terminal?

12 A. Yes.

13 Q. When you got there, did you know a fellow by
14 the name of Robert Fingerhut?

15 A. Yes.

16 Q. How did you know him?

17 A. He ran the Youngstown station and the Warren
18 station.

19 Q. Now at that time, were you aware of any
20 construction that was being done at the
21 Youngstown station?

22 A. Yes. The city bus and Greyhound bus pull in.

1 They were resurfacing that area right
2 there.

3 Q. The parking lot?

4 A. Yes.

5 Q. And how many buses were there when you got
6 there?

7 A. When I arrived there, there weren't any buses
8 there. I was the first bus to get there
9 and I pull up in front of the bus
10 station.

11 Q. Did another bus arrive?

12 A. Yes, one came in from Cleveland.

13 Q. And what would Mr. -- well, was somebody
14 responsible for loading and unloading the
15 buses?

16 A. Normally, they would have a ticket agent
17 present that sold tickets and a guy that
18 worked in the back that would come out
19 and load and unload buses.

20 Q. Now that particular day, who handled the bus?

21 A. Mr. Fingerhut. He was the only one there.

22 Q. And what about your own bus?

1 A. I did my own, because I parked out front and I
2 dropped my passengers off out front and
3 the other bus came in and he pulled in
4 the back and I walked around and I asked
5 him why he was he around there and Mr.
6 Fingerhut came out and told me that I
7 could pull my bus around also if I wanted
8 to, but I told him I had unloaded my bus
9 already.

10 Q. Now, at that time, did you know a person by
11 the name of Donna Roberts?

12 A. Yes.

13 Q. And how did you know Donna Roberts?

14 A. She worked at the Warren station and from what
15 I know, they were husband and wife.

16 Q. Mr. Fingerhut and Donna Roberts?

17 A. Yes.

18 Q. Do you see her -- well, can you describe her
19 at that time, what size was she?

20 A. She was a short lady. I would say about five
21 foot one, five foot two. Reddish hair.
22 I would say she was in her fifties.

1 Q. And when you got done at the Youngstown
2 station, where did you go?

3 A. I went to the Warren station.

4 Q. And you said it usually took you about 30
5 minutes?

6 A. About 30 minutes, yes.

7 Q. The same thing that day?

8 A. Yes.

9 Q. And so you got to the Warren terminal about
10 what time?

11 A. About 5:15.

12 Q. And what did you do when you got there?

13 A. When I got there, I unloaded my passengers,
14 because we have to pull up on the side of
15 the street there, the bus station. We
16 can't park around in front of it, so we
17 have to park on the side and unload and
18 pick up passengers there, and you had to
19 walk around into the terminal and check
20 to see was anybody in there, any luggage
21 or anything.

22 Q. And you did that?

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1 A. Yes.

2 Q. And where did you go then?

3 A. I went into the bus station and I asked did
4 they have any passengers or any luggage.

5 Q. Who was there?

6 A. Donna Roberts.

7 Q. Do you see her here today?

8 A. Yes.

9 Q. Can you point her out?

10 A. Yes, right there. (Indicating)

11 MR. BAILEY: May the record reflect
12 that the witness identified the Defendant?

13 THE COURT: The record will reflect
14 that.

15 Q. And where was she?

16 A. She was behind the counter.

17 Q. Can you describe this counter area?

18 A. This counter area is -- it has a, like a glass
19 partition in front of it, something like
20 glass, plexiglass or whatever, something
21 like that.

22 Q. Are the customers allowed behind there?

1 A. No.

2 Q. That is basically for employees only?

3 A. Yes.

4 Q. And what was she doing?

5 A. She was on the computer when I walked in.

6 Q. What did you say to her?

7 A. When I walked in and I spoke to her and I
8 asked did they have any luggage, or any
9 passengers and she said no. She said she
10 was in the computer, and trying to shut
11 it down. That is when I said -- she was
12 on the computer and she was trying to get
13 it shut down, and so I said, "Are you in
14 the chat room?"

15 Q. In the chat room?

16 A. Yes.

17 Q. Where people talk to each other?

18 A. Yes. And she said, "No." I said, "Are you
19 sure you're not in there talking to some
20 of the guys?" I said, "You can tell me
21 who they are like that." She said,
22 "There's no guy like that." I said,

1 "Come on, tell me," and she said, "His
2 name is Nate."

3 Q. She said Nate?

4 A. That is what she said.

5 Q. At that point, what happened?

6 A. This gentleman walked from around in the back,
7 back behind her.

8 Q. In the employees' part?

9 A. Yes.

10 Q. Part of the ticket area?

11 A. Yes.

12 Q. Can you describe this man?

13 A. Thin black guy. I would say in his thirties,
14 I would guess.

15 Q. About how tall?

16 A. About five-nine, five-ten, somewhere along
17 there.

18 Q. How was he dressed, if you remember?

19 A. He had on a green jogging suit, warm-up suit.

20 Q. Green jogging suit. Anything unusual about
21 it?

22 A. It looked to be new.

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1 Q. Brand new?

2 A. Yes.

3 Q. And did you ask him anything?

4 A. I asked him was his name Nate? I said, "Are
5 you Nate?" And he said, "Yes."

6 Q. And then what did you say?

7 A. I asked him were they trying to leave and get
8 out of there and he said, "Yes, we're
9 trying to get out of here."

10 Q. You are directing that at both him and Donna
11 Roberts?

12 A. Yes. I said, "I won't hold you up, I'll go
13 ahead and leave. I'll get out of your
14 way."

15 Q. Did you then leave?

16 A. I did, yes.

17 Q. How did they seem?

18 A. Just normal.

19 MR. INGRAM: Objection.

20 Q. Did they appear to be in a hurry?

21 A. Not really --

22 THE COURT: Did you object?

1 MR. INGRAM: No.

2 A. Just that she was trying to shut down the
3 computer and he was standing over next to
4 the wall.

5 Q. And about a month and a half later, did you,
6 back on February 1 of 2002, did you talk
7 to the Howland detectives, Sergeant
8 Dillon and Sergeant Monroe?

9 A. Yes.

10 Q. And I take it you gave them a statement?

11 A. Yes.

12 MR. BAILEY: Thank you.

13 CROSS EXAMINATION BY MR. INGRAM:

14 Q. Good morning, Mr. McCoy. How are you?

15 A. Good morning.

16 Q. I just have a couple of questions for you.

17 Back on February 1st of 2002 you talked
18 to some detectives from Howland?

19 A. Yes.

20 Q. And that would be Detective Dillon and
21 Detective Monroe?

22 A. Yes.

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1 Q. Did they ask you to sign a statement?

2 A. I'm not sure whether I was asked to sign one.

3 I think I did, I'm not positive.

4 Q. I'm going to hand you a document dated

5 February 1, 2002; is that a copy of your
6 statement?

7 A. Yes.

8 Q. And it is a written statement, is it not?

9 A. Yes.

10 Q. And does it bear your signature?

11 A. Yes.

12 Q. You arrive at the Warren bus station there at
13 approximately 5:15, am I correct?

14 A. Yes.

15 Q. And when you enter, Donna is on the computer
16 in the office portion of the Warren
17 terminal?

18 A. Yes.

19 Q. And that is separated from the rest of the
20 terminal by a glass partition?

21 A. Yes, like a half wall and some glass there,
22 and also some wire. I'm not totally

1 exact of everything that is there. There
2 was a partition, yes.

3 Q. When you initially approached the partition
4 and talked with Donna, do you realize
5 that this gentleman by the name of Nate
6 is there?

7 A. No, there's no one there but her.

8 Q. You then talk to Donna, she mentions the name
9 to you, Nate?

10 A. Yes.

11 Q. And at some point in time after she mentions
12 the name Nate, a black fellow walks out
13 from somewhere, am I correct?

14 A. Yes, from back where she's at.

15 Q. So this fellow that walked forward made no
16 effort to hide himself from you, did he?

17 A. No.

18 Q. He simply walked right up to you, and said
19 that indeed he was Nate?

20 A. He didn't walk up to me. What he did, he just
21 walked out, and when he walked out, I
22 asked him was he Nate.

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1 Q. And he said yes?

2 A. Yes.

3 Q. He didn't tell you, "Forget I was here, forget
4 you ever met me," or anything like that?

5 A. No.

6 Q. Before you went to the Warren station, you had
7 been at the Youngstown station?

8 A. Yes.

9 Q. And you arrived at the Youngstown station at
10 about 4:30?

11 A. Yes.

12 Q. And Mr. Fingerhut was the only employee
13 present at that time?

14 A. Yes.

15 Q. You know Frank Reynolds that works there at
16 Youngstown terminal?

17 A. Maybe by face. By name, no.

18 Q. But while you were there on December 11, 2001,
19 there was no one there to help Mr.
20 Fingerhut. He was working by himself?

21 A. Correct.

22 MR. INGRAM: No further questions.

1 MR. BAILEY: No redirect.

2 THE COURT: Sir, we thank you very
3 much. You are excused.

4 OFFICER JAMES CAMPBELL

5 being duly sworn according to law, on his oath,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. BAILEY:

8 Q. Good morning. Would you tell the Court and
9 Jury your full name, place of employment
10 and position?

11 A. My name is Jim Campbell. I'm an officer with
12 the Howland Police Department.

13 Q. And how long have you been so employed?

14 A. Since 1988.

15 Q. And your duties and responsibilities?

16 A. That of patrolman with the patrol division.

17 Q. Now, before that, where were you employed?

18 A. Trumbull County Sheriff's department.

19 Q. And how many years of police work do you have?

20 A. Approximately 26 years.

21 Q. Now, I'm going to direct your attention back
22 to December 12, 2001. At that time, with

1 the Howland Police Department what duties
2 did you have back then?

3 A. I was assigned to the patrol division, but I
4 was requested by the investigative
5 section to attend an autopsy at Trumbull
6 Memorial Hospital.

7 Q. Do you know whose autopsy that was?

8 A. Robert Fingerhut.

9 Q. Did you take a camera with you?

10 A. Yes, I did.

11 Q. Who was present at that autopsy?

12 A. Myself and the coroner.

13 Q. Was that doctor -- was that autopsy performed
14 by Dr. Germaniuk?

15 A. Yes, it was.

16 Q. Now, I'm going to hand you a series, a set of
17 photographs, State's Exhibits 61, 62, 63,
18 64, 65, 66, 67 and 68. Without showing
19 them to the Jury at this time, I'll ask
20 you to look at these pictures to yourself
21 and see if you can recognize all of those
22 photos. Is there some writing on the

1 back that you can identify?

2 A. Yes, on the back is the date and my initials.

3 Q. And did you take all of those pictures?

4 A. Yes.

5 Q. And do they all truly and accurately depict
6 what you observed at the time that you
7 took each picture?

8 A. Yes.

9 Q. Now, I'm going to show you some of these
10 pictures. I'm going to show you what has
11 been marked for identification as Exhibit
12 No. 1. Can you identify that?

13 A. That was the jersey that was worn by the
14 victim, Robert Fingerhut.

15 Q. I'm sorry, I'll show you what has been marked
16 for identification as State's Exhibit 61.
17 What does that depict?

18 A. That depicts the jersey that was worn by
19 Robert Fingerhut.

20 Q. Next I'm going to show you what has been
21 marked for identification as State's
22 Exhibit 62. Can you identify that?

1 A. Again, that is a piece of apparel that was
2 worn by Robert Fingerhut that was removed
3 down at the coroner's office.

4 Q. Now the next picture I'm going to show you, I
5 want you to just look at it yourself
6 without showing it to the Jury at this
7 time. State's Exhibit 63. What does
8 that depict?

9 A. That is a photograph of Robert Fingerhut
10 showing a chest wound to the right side
11 of his chest.

12 Q. I'm going to show you State's Exhibit 64. Can
13 you identify that?

14 A. That is a projectile that was removed from
15 Robert Fingerhut.

16 Q. What area of his body?

17 A. It was taken from the brain.

18 Q. You said projectile?

19 A. A bullet, correct.

20 Q. I'm going to show you what has been marked for
21 identification as State's Exhibit 65.
22 Can you identify that?

1 A. That is the close-up of the same projectile.

2 Q. State's Exhibit 66?

3 A. Those are additional articles of clothing that
4 were removed from the deceased by the
5 coroner.

6 Q. State's Exhibit 67?

7 A. It is the photograph of an X-ray of the
8 deceased, with the position of the
9 bullet.

10 Q. In what part of his body?

11 A. In the brain.

12 Q. Do you have a laser? This button is laser, if
13 you point it at that. Can you point that
14 out?

15 A. This area right here, this is the projectile
16 that was located in the brain.

17 Q. Exhibit No. 68.

18 A. That was the jacket that was worn by the
19 victim, Robert Fingerhut.

20 Q. Where was this autopsy performed?

21 A. It was at the coroner's office at Trumbull
22 Memorial Hospital, Forum Health.

1 Q. Now, do you know approximately how many hours
2 you were there for this autopsy?

3 A. Three, four, I can't be sure. Three or four
4 hours, somewhere in that vicinity.

5 Q. This projectile that was removed from Mr.
6 Fingerhut's brain, did you take custody
7 of that from the doctor?

8 A. Yes, I did, down there at the coroner's
9 office.

10 Q. Officer, I'm going to hand you what has been
11 marked for identification as State's
12 Exhibit 266. Can you look at that and
13 see if you can identify that? It is a
14 little package.

15 A. This is the sealed packet that holds the
16 projectile from Mr. Fingerhut.

17 Q. When you receive that, what, do you mark that
18 in any way?

19 A. It is marked with my indication of what I
20 number it, along with Sergeant Monroe and
21 his initials and it is taken and placed
22 in the evidence room.

1 Q. And I take it, it was in a sealed condition
2 when you did that?

3 A. It was.

4 Q. And you gave it to Detective Monroe?

5 A. At a later point, yes.

6 Q. Now, was that at the Howland Police
7 Department?

8 A. That is correct, secured in our evidence room.

9 Q. Now, did you also -- I'm going to hand you
10 what has been marked for identification
11 as State's Exhibit 265. An envelope
12 containing a packet inside. Did you have
13 occasion to receive a vial of blood from
14 the victim, Robert Fingerhut?

15 A. Yes, I did.

16 Q. You can take it out of the plastic sleeve, if
17 you want.

18 A. Okay.

19 Q. Did you receive that from a registered nurse
20 there at Trumbull Memorial Hospital?

21 A. Yes.

22 Q. That was at the time of the autopsy?

1 A. Yes, it was.

2 Q. And was that marked on that vial by the
3 hospital?

4 A. Yes.

5 Q. And did you also mark that and take it over to
6 the Howland Police Department evidence
7 room?

8 A. All of it was tagged and returned to the
9 evidence room.

10 Q. And then subsequently turned over to Detective
11 Monroe?

12 A. Correct.

13 Q. I'm going to show you State's Exhibit 66. You
14 indicated the victim's clothing, that you
15 took a picture of that. Did the victim
16 also have any jewelry on his person?

17 A. Yes, which is displayed also in this
18 photograph.

19 Q. Do you remember what the jewelry was?

20 A. There was a watch, some rings, necklace, might
21 have been a bracelet. I have to look a
22 the inventory sheet. There were several

1 articles of jewelry.

2 Q. Do you remember what they were made of?

3 A. They appeared to be 14 karat gold.

4 MR. BAILEY: Thank you.

5 CROSS EXAMINATION BY MR. INGRAM:

6 Q. Good morning. The jewelry, the watch, the
7 rings, the necklace, all of that was 14
8 karat gold or appeared to be?

9 A. I'm not a jeweler. I can't tell you. It
10 appeared to be good jewelry.

11 Q. You just told Mr. Bailey it appeared to be 14
12 karat gold?

13 A. It appeared to be.

14 Q. It is your understanding that those items were
15 removed from Mr. Fingerhut?

16 A. Correct.

17 Q. Do you have training in reading X-rays?

18 A. No, I don't.

19 Q. That X-ray that Mr. Bailey showed you, did you
20 obtain the answer from Dr. Germaniuk, is
21 that how you knew how to answer those
22 questions?

1 A. It was something that we looked at together as
2 an X-ray from the X-ray technician that
3 brought it back down from the X-ray
4 department indicating that it was in fact
5 the bullet that was in the brain.

6 Q. You couldn't make that determination by
7 yourself, could you?

8 A. No, I could not.

9 Q. The duties and responsibilities of a patrolman
10 differ from the duties and
11 responsibilities of a detective and
12 investigator or a crime scene technician,
13 do they not?

14 A. Yes, they do.

15 Q. And in many respects, patrolmen, to use I
16 guess a frequent phrase, after 911 are
17 first responders?

18 A. Yes.

19 Q. Frequently, the patrol officer is the first
20 person on the scene, usually the first
21 person on the scene, correct?

22 A. That is correct.

1 Q. And as a result, you guys all have training on
2 how to treat and preserve the integrity
3 of crime scenes, do you not?

4 A. Yes.

5 Q. And you also have training on report writing?

6 A. Yes.

7 Q. Basically, you are trained that your reports
8 should be as complete and thorough as you
9 can reasonably make them?

10 A. Correct.

11 Q. And in terms of protecting the integrity of
12 evidence at a crime scene, if you are a
13 patrol person, you try to keep
14 unnecessary people away from the scene of
15 an offense, am I correct?

16 A. That is correct.

17 Q. And if you are a patrol person and you see or
18 notice evidence at a scene, you are
19 supposed to make a reasonable effort to
20 note the existence of that evidence in
21 your report, am I correct?

22 A. Correct.

1 MR. INGRAM: No further questions.

2 REDIRECT EXAMINATION BY MR. BAILEY:

3 Q. You weren't the scene officer at the scene of
4 the homicide -- scene officer in this
5 case, were you?

6 A. No.

7 Q. You were assigned to go to the autopsy and
8 take some photos?

9 A. Correct.

10 Q. And collect some evidence?

11 A. That is correct.

12 Q. And what was your job at the Sheriff's office
13 before going to Howland Township Police
14 Department?

15 A. I had several functions. I was a detective in
16 the investigative section for years and I
17 worked undercover narcotics for years,
18 and I was also a patrol deputy.

19 Q. And I take it as detective and the evidence
20 officer, you got to take photographs?

21 A. Correct.

22 Q. Mr. Ingram asked you about the X-ray, were you

1 present when the projectile was removed
2 from the victim's brain?

3 A. Yes, I was.

4 Q. And that was the same area that looked like in
5 the X-ray?

6 A. It appeared to be.

7 MR. BAILEY: Thank you.

8 THE COURT: Any other questions?

9 MR. INGRAM: No.

10 THE COURT: Officer, you are
11 excused.

12 EDWARD LULLA

13 being duly sworn according to law, on his oath,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. BAILEY:

16 Q. Good morning. Would you tell the Court and
17 Jury your full name, place of employment
18 and position?

19 A. My name is Edward Lulla, special agent with
20 the Ohio Attorney General's Bureau of
21 Identification out of the Boardman
22 office.

1 Q. What education, training and experience do you
2 have to hold your present position?

3 A. I have a Bachelor's degree in criminal
4 justice. I have approximately 18 years
5 as a police officer, five of those as
6 being a special agent. During my 13
7 years as a police officer, I was a police
8 detective for five of those years in
9 Steubenville which is in Jefferson
10 County, Ohio.

11 Q. And you have been with the crime scene unit
12 for how long?

13 A. Just over five years.

14 Q. Where is your crime scene unit office located?

15 A. Our headquarters is in London, Ohio, which is
16 outside of Columbus, but I'm assigned to
17 the satellite office which is in
18 Boardman, Ohio.

19 Q. And as a member of the crime scene unit, what
20 do you do, what are your duties?

21 A. We assist smaller agencies throughout the
22 State of Ohio, in processing crime

1 scenes, processing evidence.

2 Q. I'm going to direct your attention to December
3 18, 2001, did you have occasion to
4 receive a call to assist in a homicide
5 investigation into the death of Robert
6 Fingerhut?

7 A. Yes, Sir, I did.

8 Q. And did you meet someone at a particular
9 location from the Howland Police
10 Department?

11 A. Yes, I met Detective Dillon.

12 Q. And when did you meet him?

13 A. It was approximately 12:30 in the afternoon.

14 Q. On December 18th of 2001?

15 A. Yes, Sir, that is correct.

16 Q. What was your purpose of meeting him?

17 A. I was requested to examine a hotel room for
18 possible blood evidence, fingerprints,
19 hairs.

20 Q. And do you know the name of the hotel or
21 motel?

22 A. I believe it was the Days Inn.

1 Q. On Market Street?

2 A. That is correct.

3 Q. And did you go to the Days Inn?

4 A. Yes, Sir, I did.

5 Q. With whom?

6 A. Detective Dillon, and we were met there by
7 Lieutenant Heaver from the Boardman
8 Police Department.

9 Q. Jeff Heaver from Boardman PD?

10 A. Yes, Sir, that is correct.

11 Q. And did you gain access to a particular room?

12 A. Yes, Sir, we gained access to room 129.

13 Q. That is the Days Inn Motel?

14 A. That is correct.

15 Q. Now, did you get an address on Market Street?

16 A. I got several. I believe the final one we
17 assumed it was 8390 Market Street. The
18 phone book had a different address. That
19 is what I believe the correct address
20 was.

21 Q. Within two digits of each other?

22 A. Yes, Sir.

1 Q. And can you describe how large a facility this
2 is?

3 A. Just a regular hotel. I believe it was only
4 one floor hotel. When you walk into the
5 room, bed, dresser, T.V., further on back
6 is a bathroom.

7 Q. What kind of evidence were you looking for?

8 A. Blood, fingerprints and any kind of maybe
9 trace evidence, hairs or fibers.

10 Q. And what did you do?

11 A. Upon walking in the room, I first just
12 visually examined the room, tried to see
13 if I could see anything with my naked
14 eye.

15 Q. Can you describe this room?

16 A. I'm not sure of the dimensions. I walked in,
17 there was a bed, window, air-conditioning
18 unit to the left; dresser, T.V. on my
19 right, and as you walked further back in
20 the room, there was a door where the
21 bathroom was located.

22 Q. And did you notice anything in regards to your

1 trace evidence when you walked into the
2 room that was observable to the naked
3 eye?

4 A. Yes, Sir, I did.

5 Q. What was that?

6 A. I located some suspect stains on the comforter
7 on the bed. I noticed a suspect stain,
8 as you walk in the door on your left hand
9 side, between the front door and the
10 air-conditioning or heating unit. I
11 located suspect stain on the bathroom
12 floor and I also located a suspect stain
13 in the bottom of a plastic garbage can
14 container, wastepaper basket.

15 Q. The suspect stain on the comforter on the bed,
16 what did you do with that?

17 A. They appeared to be blood to me. We have a
18 presumptive test we use. If we go to a
19 crime scene, there could be a thousand
20 stains. This presumptive test tries to
21 narrow it down to make sure that the
22 possibilities are that it is blood. It

1 is called phenolphthalein. I tested each
2 suspect stain. Each stain tested
3 positive.

4 Q. How do you do this, when you use this
5 phenolphthalein?

6 A. Take a regular cotton swab like a large Q-tip,
7 we moisten it with some distilled water.
8 We absorb some of the stain. We place
9 some of the phenolphthalein on it and we
10 place a little hydrogen peroxide. If the
11 tip of the cotton swab turns pink, that
12 is presumptive positive that that stain
13 is blood.

14 Q. And what did you do if it turns pink?

15 A. We can do one of two things. If it is a large
16 object, we can either just use another
17 sterile cotton swab and dampen it with
18 distilled water and absorb some of the
19 stain. If it is an object we take with
20 is, like in this case, the comforter, I
21 package up the comforter in a large brown
22 paper bag and take it with me.

1 Q. When you entered that room, was it cleaned or
2 unoccupied?

3 A. Yes, Sir, it was unoccupied.

4 Q. What else did you observe then?

5 A. I also found two, like a hand towel and a
6 washcloth underneath the bathroom sink.
7 One had a yellowish stain on it and
8 another one had another stain which
9 appeared to be blood. I also checked
10 that stain and it was presumptive
11 positive for blood. I also found several
12 pubic hairs on and around the rim of the
13 toilet seat and around the rim of the
14 toilet seat and I collected those, also.

15 Q. Now, did you do any other testing while you
16 were in there?

17 A. No, I believe I then fingerprinted the room
18 for fingerprints.

19 Q. What about, was there a trash bucket?

20 A. Yes, Sir. There was a stain on the bottom of
21 the trash bucket.

22 Q. What did you do with that?

1 A. I checked that with the swabs. I absorbed it
2 with the sterile cotton swab and took the
3 stain instead of taking the whole bucket.

4 Q. What about the fingerprintings? How do you do
5 that?

6 A. There's several methods. In this instance, I
7 had a bottle of fingerprint powder and a
8 brush, and I placed the fingerprint
9 powder on the surfaces that are conducive
10 for fingerprints. A lot of surfaces
11 aren't conducive like carpet or older
12 wood. Most smooth surfaces you can
13 obtain a fingerprint from.

14 Q. I take it all surfaces don't collect
15 fingerprints?

16 A. That is correct.

17 Q. Now, so what did you fingerprint?

18 A. The smooth surfaces, I believe it was the
19 bathroom walls were like a tile, they
20 were very smooth. The telephone, the
21 door, maybe the T.V. Those were most of
22 the surfaces. The other surfaces were

1 like textured wallpaper and the wood on
2 the dressers and stuff aren't conducive
3 for fingerprints. I attempted but there
4 were no fingerprints on them.

5 Q. Now, did you take any photographs that day?

6 A. Yes, Sir, I did.

7 Q. And what did you photograph?

8 A. The outside of the room, the interior of the
9 room, the stains prior to lifting.

10 Q. I'm going to hand you a series of photographs,
11 199 through 226. I'm going to show you a
12 series of photographs that range from 199
13 to 226, less 202 and 204. I'm going to
14 ask you just to look at these. I believe
15 you have seen them before. And can you
16 identify those as to who took all of
17 those pictures that are in that stack and
18 if there's any writing on the back?

19 A. These appear to be the photographs I took. On
20 the back is the date I obtained them, my
21 initials, and my unit number which is
22 117.

1 Q. Now, I'm going to -- all of these pictures,
2 you took all of those pictures that are
3 in the packet?

4 A. Yes, Sir, I did.

5 Q. And do they all appear to truly and accurately
6 reflect what you observed that day?

7 A. Yes, Sir, they do.

8 Q. Now, I'm going to show you what has been
9 marked for identification as State's
10 Exhibit 199. Can you identify that?

11 A. That is the exterior door of room 129.

12 Q. Next I'm going to show you what has been
13 marked for identification as State's
14 Exhibit 200. What does that show?

15 A. That is the bed inside of room 129. The
16 yellow placards indicate the location of
17 a stain.

18 Q. Exhibit No. 201?

19 A. If you are inside room 129 and you were
20 looking out towards the front door, that
21 is the front door as it is shut.

22 Q. State's Exhibit 203. What does this show?

1 A. If you are standing beside the bed, that is
2 facing the dresser, the open door is the
3 bathroom.

4 Q. State's Exhibit 205.

5 A. That is the bed inside room 129; to the left
6 is the air-conditioning heating unit and
7 the window.

8 Q. State's Exhibit 206.

9 A. Another view of the interior of the room, the
10 bathroom door opened.

11 Q. State's Exhibit 207.

12 A. A photograph of the open bathroom door.

13 Q. State's Exhibit 208.

14 A. That is a photograph of the stain on the
15 comforter.

16 Q. Which area -- where is it with the laser
17 pointer? Can you point that out?

18 A. Right here and right there. (Indicating)

19 Q. This is the area that you tested?

20 A. That is correct.

21 Q. Exhibit No. 209.

22 A. As you come to the door, on the left hand

1 side, between the door and the
2 air-conditioning heating unit, here's my
3 placard and right around here is the
4 stain. (Indicating)

5 Q. State's Exhibit 210.

6 A. That is a close-up of the previous photograph.
7 I believe the stain is right here.
8 (Indicating)

9 Q. You often bring placards to the scene?

10 A. Yes, Sir.

11 Q. With placard numbers?

12 A. Yes, Sir.

13 Q. State's Exhibit 211.

14 A. That is the stain of the previous two
15 photographs. It is an up close
16 photograph. Stain is right here.

17 Q. To the right of the placard?

18 A. Yes, Sir.

19 Q. State's Exhibit 212.

20 A. These are small suspect stains on the bathroom
21 floor.

22 Q. Whereabouts?

1 A. Each little purple arrow points it a suspect
2 stain.

3 Q. State's Exhibit 213.

4 A. It is just a photograph of a previous scene,
5 just a little further back.

6 Q. State's Exhibit 214.

7 A. Another photograph, just a little further away
8 showing where the stain is in relation to
9 the tub and the door.

10 Q. State's Exhibit 215.

11 A. These are the hand towels and the washcloth
12 that I located underneath the sink in the
13 bathroom.

14 Q. Which is which?

15 A. Indicated by No. 4.

16 Q. State's Exhibit 216.

17 A. This is the larger hand towel that I found,
18 some type of crusty yellow staining and
19 this is the smaller washcloth that I
20 found, the suspect what appeared to be
21 blood stain.

22 Q. State's Exhibit 217.

1 A. This is the plastic trash can, wastepaper
2 basket I located in the bedroom.

3 Q. Is this the one where you noted a stain?

4 A. The stain is in the bottom of the trash
5 container.

6 Q. State's Exhibit 218.

7 A. This is a photograph looking down into the
8 trash container. I believe the stain is
9 here. (Indicating)

10 Q. State's Exhibit 219. This is a close-up of
11 that?

12 A. That is correct. This is the suspect stain
13 right here, which tested positive for
14 blood.

15 Q. State's Exhibit 220.

16 A. This is the toilet in the bathroom.

17 Q. Those little purple arrows on the floor in
18 front of it?

19 A. I believe those are pubic hairs or suspect,
20 small little black hairs.

21 Q. And these little purple things, how do you do
22 that?

1 A. They are like little stickers I put on there,
2 so it will draw your attention to what
3 I'm trying to show you in the photograph.

4 Q. State's Exhibit 221. Is this a close-up of
5 that area?

6 A. That is correct.

7 Q. And where the arrow is, that is what you
8 wanted to point out?

9 A. A little hair here, a little here and a little
10 hair up there.

11 Q. State's Exhibit 222. What does that show?

12 A. This is the side of the toilet bowl. Also
13 suspect hairs are located. That is what
14 these small purple arrows are indicating.

15 Q. And State's Exhibit 223. Is this a close-up
16 of that area?

17 A. Yes, Sir, it is.

18 Q. Did you do anything -- did you have occasion
19 to go outside that building to the rear
20 of the building?

21 A. Yes, Sir, I did.

22 Q. What did you do there?

1 A. Just photographed the exterior, photographed
2 the dumpster.

3 Q. Exhibit No. 224. What does that show?

4 A. That is the BFI dumpster located at the rear
5 of the hotel.

6 Q. And Exhibit No. 225.

7 A. That is a photograph indicating the location
8 of the dumpster as compared to the hotel
9 itself.

10 Q. The hotel is on the left side?

11 A. Yes, Sir.

12 Q. And Exhibit No. 226.

13 A. Just exterior photograph of room 129 with the
14 door open.

15 Q. How many presumptive tests did you make in
16 that particular room, room 129?

17 A. For every stain that I located, I did a
18 presumptive test. There were no stains
19 that I located that did not indicate the
20 presence of blood with the presumptive
21 test.

22 Q. They all indicated presumptively the presence

1 of blood?

2 A. That is correct.

3 Q. Were there five of those?

4 A. Yes, Sir.

5 Q. And you also lifted -- did you do prints,
6 lifts on the prints?

7 A. Yes, Sir.

8 Q. How do you do fingerprint lifts?

9 A. Once we process a surface for fingerprints,
10 then the fingerprints are developed, you
11 can actually see them with your eye.
12 We'll take fingerprinted tape and place
13 them over the developed fingerprint and
14 you just slowly lift off the fingerprint.
15 Now, the print is on the tape. We then
16 take that tape and put a piece of plastic
17 sheeting, sort of like putting it on an
18 overhead projector. We now place the
19 fingerprint that is on the tape on this
20 piece of plastic.

21 Q. When you collect all of this evidence, do you
22 tag it and bag it and package it?

1 A. Yes, Sir, I do.

2 Q. Do you seal it then?

3 A. Yes, Sir, I do.

4 Q. And where do you take it?

5 A. I take it to my office in the Boardman, Ohio
6 BCI office.

7 Q. What happens to it then? What is your
8 standard procedure?

9 A. It is locked in an evidence locker until the
10 intake officer, who is our secretary, is
11 available. I then submit that evidence
12 to her and twice a week she takes all of
13 the evidence that the office has
14 collected to the lab which is in
15 Richfield, Ohio.

16 Q. Is that all taken in a sealed condition?

17 A. Yes, Sir.

18 Q. It is kept in Richfield at their evidence
19 area?

20 A. Correct.

21 Q. Until the lab tech requests -- the lab tech
22 comes and takes it and breaks the seal

1 and analyzes what is inside?

2 A. That is correct.

3 Q. Now, is there some special sheet that you have
4 to fill out when you collect evidence?

5 A. No, Sir, there's not.

6 Q. When evidence is taken to BCI in Richfield, is
7 there some sheet that is prepared that
8 would list what is being taken?

9 A. Yes, there's an evidence submission sheet and
10 that is assigned a lab number so all of
11 the items from that investigation are
12 listed underneath that lab number.

13 Q. And that is a unique case number from BCI?

14 A. Just for that case itself.

15 Q. And subsequent submissions would -- would they
16 get an additional letter next to a
17 number?

18 A. Yes, Sir. The second submission would be an
19 A, the second a B.

20 Q. Attached to the unique case number in that
21 case?

22 A. That is correct.

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1 Q. I'm going to hand you what has been marked for
2 identification as State's Exhibit 279.

3 I'll ask if you can identify that?

4 A. Yes, I can.

5 Q. What is that?

6 A. This is an Ohio BCI lab number evidence
7 submission sheet. The lab number is
8 01-35755-B.

9 Q. Is that the evidence sheet that was prepared
10 in this particular case for your
11 investigation at that hotel room?

12 A. Yes, it was.

13 Q. And what is listed, what do you list on that
14 sheet?

15 A. I listed B-1, one paper bag containing one
16 comforter from bed with suspect stain.
17 B-2, one box containing suspect stain
18 from wall, photo ID No. 2. That
19 indicates the little placards that were
20 on the wall. B-3, one box containing
21 suspect stain from bathroom floor, photo
22 ID number three. B-4, one bag containing

1 one washcloth with suspect stain from
2 bottom of bathroom sink, photo ID No. 4.
3 B-5, one bag containing one hand towel
4 with suspect stain from bottom of
5 bathroom sink, photo ID No. 4. B-6, one
6 box containing a suspect stain from
7 bottom of trash can, photo ID number
8 five. B-7, one envelope containing tape
9 lifts containing hair from toilet area.
10 B-8, one envelope containing latent
11 lifts. Those would be the fingerprints
12 that were developed and lifted with the
13 tape. B-9, one envelope containing the
14 acetate sheet containing elimination and
15 palm prints from Jennifer Robinson, Days
16 Inn housekeeping staff.

17 Q. Who was Jennifer Robinson?

18 A. Part of securing from the hotel, we were able
19 to locate Mrs. Robinson. She was the
20 housekeeping personnel that had cleaned
21 the room. Knowing she had touched the
22 areas in the room, I requested a copy of

1 her fingerprints and she complied.

2 Q. How did you do that?

3 A. I have a little kit that I carry with us,
4 amongst our equipment that we fingerprint
5 powder her hands and place them on a
6 piece of sticky paper and it is when
7 someone is arrested, their initialed
8 prints are taken. It works the same way,
9 but it is a lot less dirty, because I
10 don't have stuff in the van that cleans
11 the ink off. We use this method instead.

12 Q. So those are her prints that were submitted as
13 B-9 for Richfield?

14 A. That is correct.

15 Q. And what date do you have as the submission
16 date?

17 A. I submitted this December 19, 2001, at 9:25
18 a.m.

19 Q. The day after you were at the motel?

20 A. That is correct.

21 Q. Now I'm going to show you -- I'm going to show
22 you some Exhibits that are pre-marked as

1 Exhibit No. 287 containing three little
2 white boxes that are labeled 276-A, 287-B
3 and a 287-C. I'll ask if you can
4 identify those?

5 A. Yes, I can.

6 Q. What is that?

7 A. 287-A is a suspect stain on a cotton swab
8 containing the suspect stain that I
9 removed from the bottom of the trash can.
10 It has the date, my name, and the
11 biohazard stickers are to inform the lab
12 technician that this is possibly blood,
13 and once we put them on, we initial them
14 and date them. It is my initial and the
15 date I placed them in there.

16 Q. When you mark something "biohazard," does it
17 indicate you have to treat it any special
18 way?

19 A. To let the lab people be advised this is
20 probably blood.

21 Q. What else is in there?

22 A. 287-C is the white box which contains the

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1 cotton swab of the stain that I removed
2 from the wall, placard No. 2. It also
3 has the biohazard sticker and my name and
4 my initials. 287-A.

5 Q. Well, 287-B. One of them is marked with a B
6 on it, on the side.

7 A. Both of these have A.

8 Q. If you look at the identify of one of the A's,
9 there's a B?

10 A. 287-B is a white box that contains a cotton
11 swab that has the suspect stain from the
12 bathroom floor. It also has a biohazard
13 sticker and the sticker with my initials
14 and the date.

15 Q. And you collected those items?

16 A. Yes, Sir, I did.

17 Q. Just for the record, one of the little white
18 boxes in there, it is marked 287-B on the
19 side. And it has got our case number on
20 it, which is 01-CR-793. But on the other
21 end of it, it had a 287-A and we marked
22 it with a B to reflect the difference

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1 between the other one that was marked
2 287-A. Exhibit No. 288. I'm going to
3 hand you back what's been marked 288.
4 Can you identify that?

5 A. This is the washcloth that I found underneath
6 the sink. Photo ID with placard No. 4.

7 Q. And you marked that bag and tag it and seal
8 it?

9 A. Yes, Sir. On bags, we usually use BCI
10 evidence tape. It has my initials and
11 the date that it was placed inside this
12 bag and secured.

13 Q. What is the purpose of doing all of that?

14 A. Just to guarantee that it is secure that no
15 one has entered the bag since I packaged
16 it.

17 Q. Exhibit No. 289. Can you identify that?

18 A. It has my handwriting on it. It is the hand
19 towel that I found underneath the
20 bathroom sink with placard number four.
21 It has the evidence tape still secured
22 with my initials and the date it was

1 placed inside of here.

2 Q. Exhibit No. 290.

3 A. This should contain the acetate sheet which
4 has the tape lifts which is taking a
5 piece of tape and I lift up the small
6 little hairs that I found around the
7 toilet bowl. Put the biohazard sticker
8 in case there's some type of disease.
9 Without the evidence tape, we put regular
10 tape on this. My initials and the date
11 it was placed inside.

12 Q. And Exhibit No. 291.

13 A. These are the elimination prints or the
14 fingerprints I taped from Jennifer
15 Robinson, the housekeeping staff at the
16 hotel. It's been sealed with tape, my
17 initials and the date it has been placed
18 inside.

19 Q. Were there some other items that are not in
20 that collection?

21 A. Yes, probably the latent fingerprint lifts,
22 the actual lifts. I believe those remain

1 with the lab at all times.

2 Q. Which would be B-8?

3 A. I believe. Yes, that's correct.

4 Q. Now how long did you spend at the motel?

5 A. Approximately four and a half hours, give or
6 take.

7 Q. Did you go to another motel after leaving the
8 Days Inn?

9 A. Yes, Sir, we did.

10 Q. And where did you go?

11 A. We went to the Wagon Wheel Motel. It is
12 located on Market Street, right down the
13 street from the Boardman Mall.

14 Q. Is that at 7015 Market Street in Boardman?

15 A. I believe that is the correct address.

16 Q. Who was with you?

17 A. Myself and Detective Dillon.

18 Q. Approximately how far is one motel from the
19 other?

20 A. I'm just guessing. Maybe two miles, three
21 miles, not that far.

22 Q. About what time did you arrive at the Wagon

1 Wheel?

2 A. We got there about 5:00 in the evening.

3 Q. And did you, was your attention directed to a
4 specific room at the Wagon Wheel?

5 A. The room 101.

6 Q. And while there, what did you do?

7 A. I photographed the exterior of the building.

8 I photographed the interior of room 101.

9 Q. I'm going to hand you a packet of photos, 192,
10 193, 194, 195 and 196. These Exhibits
11 are pre-marked for identification. I'm
12 going to ask you to look at these and see
13 if you can identify these particular
14 photographs by the front and by any
15 writing on the back.

16 A. These are the photographs I took at the Wagon
17 Wheel on the 18th of December, 2001. On
18 the back is the date I obtained them,
19 which is 12-18-01, my initials and my
20 unit number which is 117.

21 Q. Now, I'll show you Exhibit No. 192. Can you
22 identify that?

1 A. This is the Wagon Wheel Motel. 101, room 101
2 is located down this corridor. Because
3 it was very dimly lit, it was hard to get
4 the actual 101 number from above the
5 door. This is where room 101 is located.

6 Q. Exhibit No. 193. What does this depict?

7 A. It is the office area of the Wagon Wheel
8 Motel.

9 Q. Who took all of these pictures?

10 A. I took these photographs.

11 Q. Do they all truly and accurately depict what
12 you observed?

13 A. Yes, Sir, they do.

14 Q. Exhibit No. 194. What does this show?

15 A. That shows the interior of room 101.

16 Q. What can you see in there?

17 A. This is the bed area.

18 Q. You have that laser pointer.

19 A. This is the bed. This is a glass wall, T.V.
20 stand here.

21 Q. Exhibit No. 195. What does this show?

22 A. I believe this is the Jacuzzi area of the

1 room. This is the shower.

2 Q. And Exhibit No. 196.

3 A. That is an outside photograph of the marquee
4 of the Wagon Wheel Motel.

5 Q. That room have mirrors in it?

6 A. Yes, Sir, I believe it did.

7 MR. BAILEY: Thank you very much.

8 THE COURT: We'll take a recess at
9 this point. Remember my previous admonition about
10 any discussion in the case. Let's take ten
11 minutes. Be back at 11:05. Make it 15 minutes.

12 (Court in Recess at 10:55 a.m.)

13 CROSS EXAMINATION BY MR. JUHASZ:

14 Q. Mr. Lulla, good morning.

15 A. Good morning.

16 Q. You mentioned to the Jury when Mr. Bailey was
17 asking you questions, that you are
18 located -- your primary base of
19 operations is the Boardman office,
20 correct?

21 A. That is correct.

22 Q. And if I understand it, you get called out to

1 help different small -- like Howland
2 Police Department in assisting in these
3 type of investigations?

4 A. That is correct.

5 Q. Did anybody call you to come out to the
6 Fonderlac address in Howland Township?

7 A. No, I'm not familiar with that address, no.

8 Q. I put back in front of you, State's Exhibit
9 279 which is the BCI submission sheet
10 that Mr. Bailey talked to you about. So
11 that we're clear for the Jury, every time
12 a case is opened in which the BCI lab is
13 going to be involved, it is given a
14 specific case number, correct?

15 A. If there's evidence that is going to be
16 submitted, each case has a BCI lab number
17 just for that case itself, yes.

18 Q. And that number is assigned, as I understand
19 it, the first time evidence is submitted
20 to the laboratory, correct?

21 A. That is correct.

22 Q. And then every time something else is

1 submitted to the laboratory, the same
2 number is used, but then followed by a
3 letter, correct?

4 A. That is correct.

5 Q. So the original submission would have whatever
6 the original number was, right?

7 A. Correct.

8 Q. And then if somebody came in later and said,
9 "We also want this tested," it would have
10 a number plus an A, B, C and so on?

11 A. Correct.

12 Q. Your submission is the B submission, is that
13 correct?

14 A. That is correct.

15 Q. The evidence submission sheet is a way to log
16 the things that are actually delivered to
17 the laboratory for possible analysis,
18 correct?

19 A. That is correct.

20 Q. The form itself indicates several types of
21 tests which can be requested, is that
22 right?

1 A. That is correct.

2 Q. And my understanding, and please correct me if
3 I am wrong, is that the person who
4 submits whatever the evidence is to BCI
5 can say, "Here's what I am giving you and
6 I would like you to do this test or these
7 tests"?

8 A. Yes.

9 Q. And are you one of the people who has
10 authority to do that? In other words,
11 when you submit evidence, can you say, "I
12 would like this tested for DNA," or "I
13 would like this tested for fingerprints"?

14 A. Well, the fingerprints, that goes without
15 saying, but as far as like blood
16 evidence, we'll indicate DNA, but usually
17 they -- it is usually discussed between
18 the requesting agency and the lab. They
19 decide which evidence is best to have
20 processed.

21 Q. You said the fingerprints are sort of self
22 evident and there's a box on there to

1 check for latent prints, correct?

2 A. That is correct.

3 Q. It is not checked on this particular
4 submission sheet, is it?

5 A. No, it is not.

6 Q. Is that because you are regarding the
7 submission of the latent prints as just a
8 given that somebody will look at those
9 prints?

10 A. No. It is probably just a typo by the
11 secretary.

12 Q. In this particular case, did you instruct --
13 I'm sorry, before we get there. Is this
14 submission sheet prepared in Boardman
15 before the evidence is taken to the lab
16 in Richfield, or is that sheet prepared
17 at the laboratory once the evidence is
18 received?

19 A. This was prepared by initials on the bottom
20 which is BS. Barbara Sofranc. She's the
21 evidence intake personnel in the Boardman
22 office. This is prepared by the Boardman

1 office.

2 Q. Did you have input into what types of tests
3 would be requested?

4 A. Yes and no. The DNA is just for the blood.
5 The blood always goes to DNA. The hair
6 would have went to trace and she did not
7 indicate latent, but those are where
8 latent always go, to latent fingerprint
9 analysis.

10 Q. Tell us when you say the hair was submitted
11 for trace, what do you mean by trace?

12 A. They would look at the hair under the
13 microscope to see species, possibly
14 gender, race, things of that nature.

15 Q. In this particular case, are you aware of any
16 other samples that were submitted for
17 trace comparison, that is, some other
18 hair samples other than what you found in
19 the hotel room and the motel room?

20 A. I don't have that knowledge, no.

21 Q. So any trace test that would be conducted here
22 would be simply comparing the different

1 hairs that you found in the bathroom to
2 see if they were consistent with each
3 other?

4 A. Possibly.

5 Q. Was there another possibility?

6 A. It could be, we'll send this to trace and as
7 the investigation possibly identifies the
8 suspect -- suspect or standard would be
9 obtained from that suspect and then they
10 could compare the two.

11 Q. And that latter one is what you would call a
12 standard, is that correct?

13 A. That is correct.

14 Q. And from your own personal knowledge, you are
15 not aware of whether any standard was
16 submitted in this case; am I
17 understanding you correctly?

18 A. That is correct.

19 Q. You also have DNA checked there?

20 A. Yes, Sir.

21 Q. And if I understood what you said to me a
22 couple of minutes ago, that would be to

1 check the blood samples that you took?

2 A. That is correct.

3 Q. Is it possible also to check the hair for DNA?

4 A. Possible, it is a lot harder, but it is
5 possible.

6 Q. Would you have to specifically request that on
7 this form if you wanted the hair checked
8 for DNA?

9 A. Not really, no.

10 Q. That would be up to somebody at Richfield?

11 A. I can't speak for everybody, but usually the
12 lab would contact the requesting agency
13 and they would see how the case is
14 progressing, what evidence would need to
15 be processed at that time.

16 Q. Your job as I understand with BCI is basically
17 to go out and to collect evidence and to
18 document whatever evidence is that you
19 find, correct?

20 A. Correct.

21 Q. And in this case, Mr. Bailey and you explained
22 to the Jury a number of photographs where

1 you put little markers and everything to
2 highlight where that evidence was found,
3 correct?

4 A. That is correct.

5 Q. So, and you were careful to use prospective
6 pictures, that is, you showed us the
7 stain on the wall for example with the
8 marker, correct?

9 A. Correct.

10 Q. And then some other photographs to show us
11 where that specific stain was in the
12 room?

13 A. That is correct.

14 Q. Is that an equally important part of your job,
15 that is, documenting not only what you
16 found, but where you found it at the
17 scene?

18 A. I believe so, yes.

19 Q. Now, besides rooms like this, part of your job
20 is also to do the same type of things at
21 crime scenes, am I correct?

22 A. Yes, Sir.

1 Q. And part and parcel of that would be likewise
2 to document not only what you found, but
3 where you found it, correct?

4 A. Yes, Sir.

5 Q. Let us say for example that at a crime scene
6 you found a footprint that appeared to be
7 in blood. Would that be something
8 significant that you would want to record
9 in some fashion?

10 A. I believe so, yes.

11 Q. And it might be reasonable for you to
12 photograph that first of all, correct?

13 A. That is correct.

14 Q. And take some of those, what I called earlier
15 prospective pictures to show not only the
16 close-up of the footprint but other
17 things in relation to the crime scene?

18 A. That is correct.

19 Q. Would you also take measurements, a point of
20 reference, this little wooden wall here
21 if it were found 18 inches from there,
22 would you also show where it was found?

1 A. Each case is different, but probably more than
2 likely, I would have.

3 Q. Do you sometimes use a photograph with a ruler
4 in it to show the measurements of
5 something? Would that be something you
6 would do?

7 A. Yes, Sir.

8 Q. Now you have also got training and experience
9 in lifting latent prints or fingerprints
10 and palm prints?

11 A. Yes, Sir.

12 Q. Are you are also trained in analyzing and
13 comparing prints, or are you not?

14 A. No, Sir, I'm not.

15 Q. You simply know what is required as far as
16 lifting them and keeping them preserved
17 so someone else can compare them, is that
18 correct?

19 A. That is correct.

20 Q. And if I understood your testimony, when
21 Mr. Bailey was asking you questions, you
22 basically look for surfaces that are

1 smooth surfaces because it is more likely
2 that we're going to leave prints on those
3 surfaces, correct?

4 A. That is correct.

5 Q. Even though you are not trained in comparing
6 fingerprints to each other, are you
7 familiar with the phrase insufficient
8 ridge detail?

9 A. Yes, Sir, I am.

10 Q. And that would be a situation where if I put
11 my thumb on this lectern here and you
12 lifted that print, there may be something
13 showing there that it is a fingerprint
14 but you may not have enough detail to
15 show a known print from me?

16 A. That is correct.

17 Q. If I were, after I put my finger or my thumb
18 on here, if I were to take this
19 handkerchief and wipe this clean, would
20 you expect to find smudges or expect to
21 find nothing?

22 A. I would expect to find nothing.

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1 Q. You took what, item B-9 on that sheet which is
2 what you called the elimination prints of
3 Jennifer Robinson, the lady who cleaned
4 the room?

5 A. That is what I was told, yes, Sir.

6 Q. And obviously, when you are taking these
7 latent lifts, you don't know who these
8 lifts belong to?

9 A. That is correct.

10 Q. You took those because someone told you she
11 might have been in the room, is that
12 right?

13 A. That is right.

14 Q. Whoever it is at BCI Richfield starts
15 comparing them. If they find her prints,
16 they can say, "We know that is the
17 cleaning lady"?

18 A. That is correct.

19 Q. That is the reason for taking those?

20 A. Yes, Sir, it was.

21 Q. Were you asked in the course of this case to
22 take elimination prints from any other

1 individual?

2 A. No, Sir, I was not.

3 Q. You also told Mr. Bailey that all of the
4 stains that you found in the room tested
5 positive or presumptive for blood, is
6 that right?

7 A. That is correct.

8 Q. That would not include, however, the yellow
9 stain that you found on that hand towel,
10 correct?

11 A. Correct.

12 Q. Did you do any presumptive test on that?

13 A. No, Sir, I did not.

14 Q. Now are you able to tell us how many hairs you
15 removed from the room or are you not?

16 A. No, I cannot.

17 Q. How about the number of latent lifts, how many
18 lifts did you find?

19 A. I would just be guessing. I would have to
20 actually see the submission sheet itself
21 and count them. We don't list how many
22 exactly fingerprints we lift.

1 Q. So if you would look, please, at State's
2 Exhibit 279 for a second, item B-8 says
3 one envelope containing latent lifts?

4 A. That is correct.

5 Q. What you are saying is you would actually have
6 to count those to see how many lifts you
7 took?

8 A. We might tape a surface and lift up that
9 surface and then that piece of tape there
10 could be ten fingerprints, but we
11 consider that lift one lift. So we would
12 actually have somebody come in and say,
13 "I count five or six on that piece of
14 tape itself."

15 Q. You mentioned also that you were there for
16 about four, four and a half hours; is
17 that right?

18 A. I believe that is correct.

19 Q. And there's no time limit on how long you can
20 spend there, is there?

21 A. No, Sir, there's not.

22 Q. You just go there and try to get as many

1 things as you can?

2 A. Yes, Sir.

3 Q. Are you comfortable that you pretty much
4 scoured the room for latent lifts or did
5 you just go to some significant areas?

6 A. I went to the areas that I believed would be
7 conducive for fingerprints.

8 Q. The towel that you submitted with the yellow
9 stain, did you ask specifically for any
10 test to be done on that towel?

11 A. Not specifically, no, I did not.

12 Q. You just checked the general box at the top,
13 where you can ask for different types of
14 tests, DNA?

15 A. Yes.

16 Q. And then you sort of leave it to the
17 discretion of the laboratory personnel as
18 to what they are going to test and what
19 they are not going to test?

20 A. Yes, Sir.

21 MR. JUHASZ: That is all I have.

22 Thank you very much.

1 MR. BAILEY: No further questions.

2 THE COURT: Thank you very much.

3 Mr. Becker, since this next witness will take a
4 considerable amount of time, you keep an eye on the
5 clock.

6 DR. HUMPHREY GERMANIUK

7 being duly sworn according to law, on his oath,
8 testified as follows:

9 DIRECT EXAMINATION BY MR. BECKER:

10 Q. Would you please introduce yourself to this
11 Jury?

12 A. My name is Humphrey Don Germaniuk, and I'm the
13 forensic pathologist for Trumbull County.

14 Q. And can you tell us what it is you do at your
15 office here in Trumbull County?

16 A. As the forensic pathologist, we're the
17 coroner's office in Trumbull County. We
18 basically determine a cause of death, a
19 manner of death and we investigate the
20 circumstances surrounding any death which
21 is unusual, unexplained, of a violent
22 nature, or of anyone who is in apparent

1 good health and suddenly dies.

2 Q. Could you please tell this Jury, first of all,
3 give them your -- how you became
4 interested in the medical field and your
5 training and education up to this point
6 in your career?

7 A. My training and education and experience began
8 nearly 30 years ago, when I was 19 years
9 old. I volunteered at the Manhattan
10 Medical Examiners Office in New York in
11 1973 and from 1973 to 1975, I assisted in
12 nearly a thousand autopsies. And after
13 the time spent there, it was love at
14 first sight, because I knew exactly what
15 I wanted to do for the rest of my life.
16 I graduated from Wagner College on
17 Stanton Island in New York in 1975. At
18 that time, I was a biology major, a
19 nursing major and chemistry minor. From
20 there I went to the University of Turin
21 in Perugia, Italy, where I took various
22 courses in liberal arts, philosophy,

1 architecture and literature, and I was
2 there from 1976 until 1977. I began my
3 medical training at the University of
4 Turin in Italy in 1977 and was there
5 until 1981 when I was transferred to the
6 University of Rome, Italy. I graduated
7 there in 1984 with an M.D. degree. From
8 there I went to Columbus, Ohio and the
9 Ohio State University Hospitals, where I
10 began my specialty training in pathology.
11 I was there from 1984 until 1988. After
12 that, I went to Miami, Florida in Dade
13 County where I began my sub-specialty
14 training in forensic pathology and I was
15 there from 1988 until 1989 as Assistant
16 Medical Examiner. From there I went to
17 Syracuse, New York where I was Associate
18 Medical Examiner from 1989 until 1994.
19 From there I proceeded to Washington,
20 D.C., where from 1994, I was the Deputy
21 Chief Medical Examiner of our nation's
22 Capitol. I held that position up until

1 1996, when I became the acting Chief
2 Medical Examiner for Washington, D.C.,
3 and then in July of 1997, I was appointed
4 the Chief Medical Examiner for
5 Washington, D.C. I was there until 1998,
6 where on January 1st of 1998, I became
7 Forensic Pathologist for the Trumbull
8 County Coroner's Office and hold that
9 position still.

10 Q. Thank you. Now Doctor, can you tell this Jury
11 what jurisdiction you were licensed to
12 practice medicine in?

13 A. I am licensed to practice medicine in the
14 State of New York, the State of Ohio, and
15 the District of Columbia.

16 Q. How long have you been licensed in the State
17 of Ohio?

18 A. In the State of Ohio since 1987.

19 Q. Now, Doctor, I want to ask you some questions
20 about different areas of pathology. You
21 mentioned you were, I think you referred
22 to it as a specialty in forensic

1 pathology, is that correct?

2 A. It is a sub-specialty of pathology.

3 Q. And can you tell this Jury, what exactly first
4 of all, pathology is?

5 A. When you go to medical school, you will learn
6 how the body is put together. That is
7 called anatomy. The structure, the study
8 of normal structure, both grossly and
9 microscopically, the study of abnormal or
10 diseased structure, both grossly and
11 microscopically is called anatomic
12 pathology. When you go to medical
13 school, they teach you how the body
14 functions. That is called physiology.
15 The study of abnormal function is called
16 clinical pathology. So, the two major
17 areas of pathology, anatomic pathology,
18 the study of abnormal structure and
19 clinical pathology, is the study of
20 abnormal function.

21 Q. And Doctor, is it possible for a doctor to
22 become what we call Board certified?

1 A. Yes.

2 Q. What does Board certified mean?

3 A. Basically, several agencies order or offer
4 Board certification, some are vanity
5 agencies. But the Board certification
6 that really is the one that you want or
7 the one that is respected is what is
8 known by the Board of Pathology, various
9 medical sub-specialties or other
10 specialties. Surgery, pediatrics,
11 internal medicine pathology, will have a
12 group or a commission of scholarly
13 individuals in that field. And they
14 pretty much determine what the bare
15 minimum is for you to know before you go
16 out and practice medicine. And
17 basically, when you apply for
18 certification by the American Board of
19 Pathology, they want to know where you
20 trained, who trained you, letters of
21 recommendation, what was your course of
22 study. Once they review all of that,

1 then you are either allowed to sit for
2 certification or you are denied. So
3 basically, it is a three day grueling
4 examination which I don't want to ever
5 take again. Once you pass that exam, you
6 are certified in anatomic pathology.
7 Once you are certified in that area, then
8 you are eligible to take the
9 sub-specialty examination, such as
10 forensic pathology or hematology or
11 pediatric pathology. And I chose the
12 course of study in forensic pathology,
13 where once again you have a group of
14 scholarly individuals that pretty much
15 decides this is the bare minimum you have
16 to know to go out and practice forensic
17 pathology. Or the sub-specialty in
18 response to your question, I am certified
19 in anatomic pathology and forensic
20 pathology by the American Board of
21 Pathology, which is a regulatory agency.

22 Q. And now, can you tell this Jury what an

1 autopsy is?

2 A. An autopsy is nothing more than a laboratory
3 test that is never conducted in a vacuum.
4 Prior to approaching the patient, you try
5 to get as much information as possible.
6 You try to go to the scene if at all
7 possible. You try to find out what the
8 turn of events are, you try to get some
9 medical history. You try to find out
10 what the police report says. Once you
11 have gotten as much of that information
12 as possible, only then do you approach
13 the particular patient in question. The
14 technical aspects of the autopsy resolve
15 around three axis. The first axis is
16 what is known as the gross examination,
17 where the body is viewed externally and
18 internally for any signs of trauma,
19 disease process, birth defects that may
20 or may not have contributed to their
21 cause of death.

22 The second axis of the autopsy is

1 what is known as microscopy. Fragments
2 of tissue are submitted to the
3 Laboratory, are processed and then
4 returned to us in the form of glass
5 slides that we look at, under the
6 microscope for the presence or absence of
7 disease or other factors, which might be
8 relevant to the case.

9 The third axis is what is known as
10 toxicology, where bodily fluids and
11 sometimes bodily tissues are submitted to
12 the laboratory and analyzed for the
13 presence or absence of alcohol or drugs
14 or poisons. Usually, when you have gone
15 through those three steps, you can,
16 within reasonable medical certainty,
17 arrive as to a cause of death, and a
18 manner of death.

19 Q. Now, can you explain the difference to this
20 Jury, what the difference is between
21 cause of death and manner of death?

22 A. Cause of death simply put, is but for -- but

1 for this particular reason, but for that
2 particular reason, the individual would
3 still be alive. But for the massive
4 heart attack, the person would still be
5 alive. But for the Oxycontin overdose,
6 the person would still be alive. But for
7 the multiple blunt traumatic injuries,
8 this person would still be alive. A
9 cause of death simply put is but for this
10 particular reason, or that particular
11 reason, the individual would still be
12 alive.

13 A manner of death on the other hand
14 are the circumstances in which the cause
15 of death took place. You can have the
16 same cause of death, but depending on the
17 circumstances, the manner of death might
18 vary, and there are only five manners of
19 death. Natural, accident, homicide,
20 suicide and undetermined. So we
21 determine a cause of death, and a manner
22 of death.

1 Let's take a look at the gunshot
2 wound to the head. A contact gunshot
3 wound to the head, we know the cause of
4 death, but depending on the
5 circumstances, that could be a homicide,
6 a suicide or an accident. So again, we
7 determine a cause of death and a manner
8 of death.

9 Q. Now, Doctor, I believe you briefly mentioned
10 what the role is of the Trumbull County
11 Coroner's Office. And that role is to
12 what?

13 A. The Trumbull County Coroner's Office gets
14 involved in any death in Trumbull County,
15 where the circumstances are uncertain,
16 where there's an index of suspicion that
17 you might be dealing with an unnatural
18 death, and any time any form of violence
19 is suggested, or thought that might have
20 occurred to the individual's death and
21 any death where an individual in
22 apparently good health, with no medical

1 history, suddenly and unexpectedly dies.
2 We're called as referees of death. We go
3 in there, we examine the scene, we
4 perform the post-mortem examination. We
5 have no interest in the case one way or
6 the other, and we make our determination.
7 We make our diagnosis regarding cause of
8 death and manner of death.

9 Q. Now, Doctor, I know in your career you have
10 made and been involved in a number of
11 autopsies. Can you approximate for this
12 Jury the number of all the autopsies you
13 have personally performed?

14 A. Yes. Right now, it's a little over 4,000
15 medical, legal post mortem examinations
16 or autopsies that I have done.

17 Q. And Doctor, you have previously testified as
18 an expert witness in other jurisdictions,
19 is that correct?

20 A. Yes.

21 Q. In the State of Ohio?

22 A. Yes.

1 Q. Can you basically give us a run down off the
2 top of your head the jurisdictions you
3 have been qualified?

4 A. The jurisdictions that I have been qualified
5 as an expert witness are Florida, New
6 York State, Virginia, Maryland, and the
7 District of Columbia as well as the State
8 of Ohio.

9 Q. Now, can you please tell this Jury and explain
10 to this Jury -- I want to direct your
11 attention to approximately -- well, not
12 sure what time you arrived, but December
13 12, 2001. Did you happen to go to a
14 location here in Trumbull County, Ohio,
15 in reference to your duties and your
16 employment with Trumbull County Coroner's
17 Office?

18 A. May I refer to my notes?

19 Q. Yes. I believe you are referring to --

20 A. I am referring to our case file which is case
21 number 01200. In answer to your
22 question, after midnight somewhere around

1 between 12:15 and 12:30 a.m., on the 12th
2 of December, 2001, I received a call from
3 our investigator about an apparent
4 suicide at 254 Fonderlac Street in
5 Howland.

6 Q. Now, Doctor, when you first arrived at the
7 scene, can you tell this Jury, not only
8 in this case but what is the first thing
9 that you will do when you get to the
10 scene and examine the body?

11 A. Well, the first thing you want to do is try to
12 get as much information as possible. You
13 try to talk to the EMS people that were
14 there, you try to talk to the responding
15 officers and try to get some background
16 to see what we have got and so when I
17 talked with the patrolman and
18 investigators that were there, I said
19 what have we got and basically, they told
20 me that according to police, the
21 individual's wife returned home shortly
22 before midnight, and that she was

1 somewhat startled because when she pushed
2 the garage door opener, instead of the
3 garage door opening, the garage door
4 closed, and the light went on. Again,
5 according to the investigators, she
6 pulled into the garage and found her
7 husband unresponsive in the kitchen.
8 There's a little island that connects the
9 kitchen with the garage door and she
10 found him unresponsive, that there was
11 some blood and that she subsequently
12 called 911.

13 Q. And Doctor, after you gathered the preliminary
14 information from the people that are
15 there at the scene, what is the next
16 thing you did?

17 A. Well, the next thing we do or did is
18 essentially, without touching anything,
19 you try to document and photograph as
20 much as you possibly can. And so, after
21 photographically documenting, I also drew
22 up a little scene sketch, and you begin

1 the examination of the body. And we
2 began to examine the body, the body was
3 not in rigor mortis, the body was still
4 somewhat warm to the touch, which tells
5 me he hasn't been dead for that long. In
6 addition, you also want to take a look at
7 the nature of the injuries, because most
8 of the time law enforcement will ask you,
9 "What are we looking for? Is it a knife?
10 Is it a gun? Is it a baseball bat?" And
11 so again, we examined the body and we
12 determined that there were multiple
13 gunshot wounds. We also photographed the
14 scene and again in the hallway, there's
15 one step that leads into the garage.
16 There was a revolver, a silver colored
17 revolver there. We examined that, and
18 none of the cartridges had any firing pin
19 impressions. None of the projectiles
20 were discharged, so apparently it did not
21 appear that this firearm was fired. And
22 based on the preliminary examination of

1 the body, we came up with a speculative
2 cause of death which was multiple gunshot
3 wounds and a speculative manner of death,
4 which was homicide.

5 Q. And that was while you were at the scene?

6 A. Yes.

7 Q. Now, did you do anything else at the scene?

8 A. Basically, when we began to examine the body
9 after it was photographed, once everyone
10 got their photographs, we rolled the body
11 over, and in between his skin and black
12 T-shirt there was a projectile that was
13 in that area, so I removed that
14 projectile, photographed it, and turned
15 it over to law enforcement at the scene.
16 And essentially that was about it.

17 Q. Now, Doctor, later on, I believe on December
18 12th, the body was removed, and it was
19 examined by yourself at the Trumbull
20 County, Trumbull Memorial Hospital at the
21 morgue there, is that correct?

22 A. Right. That is where we do our post-mortem

1 examinations at Trumbull Memorial.

2 Q. Can you tell this Jury, first of all, what a
3 post-mortem examination is?

4 A. Well, like I said earlier, an autopsy is
5 nothing more than a laboratory test that
6 is never conducted in a vacuum. You
7 would remove the clothing and try to
8 determine what is important for
9 evidentiary purposes, what is not. You
10 remove the jewelry, you would go through
11 some of the personal effects and sort of
12 make a decision what law enforcement
13 might need to test further, or what might
14 not be important. And then what you
15 begin to do, again there are basically
16 five steps that you follow in the
17 post-mortem examination.

18 The first step is the external
19 examination. What does this person look
20 like without any evidence of medical
21 therapy, without any evidence of injury?
22 What are the scars, what are the tattoos,

1 how tall, how heavy are they?

2 The second part of the post-mortem
3 examination is what is known as evidence
4 of medical therapy. Where you
5 specifically hone in on what medical
6 procedures have been done. Did he have
7 an IV line, are there electrocardiogram
8 pads on the chest? Was the patient
9 undergoing surgery?

10 The third part is what is known as
11 the evidence of injury. Where you
12 specifically concentrate on what injuries
13 this individual received.

14 The fourth part is what is known as
15 the internal examination, where you
16 examine all of the organs internally; and
17 fifth part is what is known as the
18 autopsy findings where in a word, or a
19 sentence, or a phrase, your major
20 findings are listed almost like the
21 contents of a book, like chapters.

22 Q. Can you please tell this Jury, the results of

1 not only your findings, but the
2 examination including the external, the
3 evidence of medical therapy and all of
4 those things you just talked about, with
5 reference to this particular individual
6 that you examined?

7 A. When I completed the examination, there were
8 nine major autopsy findings; number one
9 was multiple gunshot wounds. Number two
10 was multiple lacerations or tears.
11 Number three was multiple abrasions, or
12 scrapes. Number four was multiple
13 contusions or bruises. Number five was
14 cardiomegaly, which simply means he had
15 an enlarged heart. Number six was
16 arteriosclerosis, coronary artery
17 disease. The seventh major finding was
18 he had a light yellow brown and soft
19 liver. Final number eight was
20 nephrolithiasis, which means he had a
21 kidney stone. And the ninth major
22 finding was diverticular disease in his

1 large intestine. And those were the
2 major findings at the autopsy.

3 Q. I am going to hand you some photographs that
4 have been marked for purposes of
5 identification as State's Exhibits 4
6 through 21, 24, 25, 26, 27, 28, 31, 37,
7 38, 39, 40, 43, 44, 47, 48, 49, and 51
8 through 60 and ask if you recognize these
9 particular photographs. Doctor, if you
10 would, I just ask that you simply not
11 publish those to the Jury at this time.

12 A. The packets of photographs handed to me by the
13 Prosecution, I'm not going to go through
14 the numbers, basically are true and
15 accurate copies of the original
16 photographs that are in the case file.

17 Q. And do those photographs fairly and accurately
18 represent the scenes of December 12th,
19 both at the house at 254 Fonderlac as
20 well as the autopsy that was conducted by
21 yourself also on December 12?

22 A. Yes, they do.

1 Q. Now, Doctor, can you describe for us, first of
2 all, with a reasonable degree of medical
3 certainty, were there any non-lethal
4 injuries on this individual -- could you
5 describe those?

6 A. Yes. Basically, the non-lethal injuries
7 consisted of lacerations or tears,
8 abrasions or scrapes, and contusions or
9 bruises.

10 Q. And where were those injuries located at on
11 the body?

12 A. The laceration or tear was in the webbing in
13 between the left thumb and the left index
14 finger. The upper outer right forehead
15 had two lacerations, one was linear and
16 that measured three-quarters of an inch
17 by less than one-sixteenth of an inch.
18 And the third laceration was on the lower
19 part of the right forehead, and there was
20 a laceration or tear, which measured one
21 quarter of an inch by less than
22 one-sixteenth of an inch. The areas of

1 scrapes involved the outside bridge, the
2 left part of the nose, where there was an
3 upside down V-shape scrape or abrasion.
4 And the back part of the right hand, also
5 had just below the index finger, a
6 three-eighths of an inch by one eighth of
7 an inch abrasion. Areas of contusion or
8 bruising on his left forehead, there was
9 an one and one-half inch by
10 three-quarters of an inch faint purple
11 contusion or bruise.

12 Q. Now, Doctor, were there -- were you able to
13 determine within a reasonable degree of
14 medical certainty, as to the cause and
15 manner of death of this individual based
16 upon your examination both at the scene
17 and your conducting of the autopsy?

18 A. Yes.

19 Q. And can you please tell this Jury based upon a
20 reasonable degree of medical certainty,
21 what your opinion is regarding the cause
22 and manner of death of this individual?

1 A. My opinion regarding the cause of death of
2 this individual is multiple gunshot
3 wounds. And my opinion regarding the
4 manner of death of this individual is
5 homicide.

6 Q. And Doctor, did you place your report -- or
7 I'm sorry, did you place your findings in
8 a report entitled the autopsy report?

9 A. Yes.

10 Q. Doctor, I'm going to hand to you State's
11 Exhibits 262, which is an 11 page
12 document, and ask if you recognize what
13 that 11 page document is?

14 A. Exhibit No. 262 consists of an 11 page
15 document which is a true and accurate
16 copy of the autopsy report, the original
17 of which is in the case file.

18 Q. And that contains your signature on that
19 document?

20 A. Yes.

21 Q. Those would be your findings then, correct?

22 A. Yes.

1 Q. Now, after an autopsy is conducted, a death
2 certificate is issued and coroner's
3 verdict, is that correct?

4 A. Yes.

5 Q. Those are generally signed by whom?

6 A. Those are signed by Dr. Soboslay, who is the
7 Trumbull County Coroner.

8 Q. And it is my understanding, just for the
9 record, that Dr. Soboslay has been in
10 some ill health here recently, is that
11 correct?

12 A. Yes.

13 Q. I'm going to hand you what has been marked for
14 purposes of identification as State's
15 Exhibits 260 and 261. I'm going to ask
16 if you recognize what State's Exhibits
17 260 and 261 are.

18 A. State's Exhibit 260 is a true and accurate
19 copy of the death certificate which is in
20 the original case file. State's Exhibit
21 261 is a true and accurate copy of the
22 coroner's verdict, which is again a copy

1 of the original. I'm sorry, a copy of
2 the copy in the case file.

3 Q. And those have both been signed by
4 Dr. Soboslay?

5 A. Yes.

6 Q. Now, Doctor, I am also going to hand you three
7 one page Exhibits, numbers 263, 264 and
8 264-A and ask if you recognize what those
9 documents are?

10 A. State's Exhibit 263 is a copy of the original
11 microscopic examination which is in the
12 case file. State's Exhibit 264 is a copy
13 of the toxicology report, a true and
14 accurate copy of the original which is in
15 the case file. State's Exhibit 264-A is
16 a true and accurate copy of the original
17 X-ray report that is in the case file.

18 Q. Doctor, I'm going to also show you now State's
19 Exhibits 61, 62, 63, 64, 65, '66, 67 and
20 68 and ask if you recognize what those
21 photographs are? Again I would ask that
22 you not publish those for the Jury.

1 A. The Exhibits handed to me are copies of some
2 of the photographs in my original case
3 file and some that are not in the
4 original case file.

5 Q. And do those fairly and accurately depict the
6 scene and the autopsy and the clothing
7 removed from the victim that night?

8 A. Well, like I said, some of these photographs I
9 did not take, and so therefore, I cannot
10 vouch for some of these. Again, when we
11 performed a post-mortem examination, I
12 take photographs, local law enforcement
13 also takes photographs, but there are at
14 least --

15 Q. Which ones are you not familiar with or did
16 you not take?

17 A. State's Exhibit 66. Probably State's Exhibit
18 63. State's Exhibit 64, State's Exhibit
19 65, State's Exhibit 67, and that would be
20 the extent of it. The others are
21 photographs that are in the original case
22 file.

1 Q. And those three that -- State's Exhibits 62,
2 61 and 68, they have the Trumbull County
3 Coroner's placard with the case number?

4 A. Our identification number. Every case gets a
5 number to identify it.

6 Q. Now was in fact an X-ray taken of this suspect
7 that evening or that day on the 12th?

8 A. Suspect --

9 Q. Not the suspect -- the deceased?

10 A. An X-ray was taken of the individual, in fact,
11 four X-rays were taken.

12 Q. And the photograph that is depicted in State's
13 Exhibit 67, does that look similar to the
14 Exhibit or the X-ray that was taken of
15 the deceased?

16 A. It has an identifier in it that says Robert
17 Fingerhut, and again I would assume that
18 this would be a police photograph of the
19 X-ray that was taken.

20 Q. And where in fact did you remove a projectile
21 from Mr. Fingerhut?

22 A. From his brain, inside of his head.

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1 Q. Now, I'm going to hand you -- well, let me ask
2 you this. The projectile that you
3 removed from Mr. Fingerhut, did you turn
4 that over to anyone?

5 A. Yes.

6 Q. Who did you turn that over to?

7 A. I believe that was Patrolman Campbell.

8 MR. INGRAM: Stipulate it was
9 Patrolman Campbell.

10 THE COURT: So stipulated.

11 MR. BECKER: Is there a stipulation
12 also that you turned over blood?

13 MR. INGRAM: So stipulated.

14 MR. BECKER: It is my understanding
15 that Defense counsel will stipulate to the
16 photographs, but may have other matters to address
17 with the Court at a later time.

18 Q. Doctor, based on your autopsy of December 12,
19 2001 and within the bounds of reasonable
20 medical certainty, do you have an opinion
21 regarding the approximate time of death
22 of Mr. Robert Fingerhut?

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1 A. Well, the approximate time of death is just
2 that, an approximation, unless it is a
3 witnessed event, there's a whole number
4 of variables. You can't look at a watch.

5 MR. INGRAM: His answer is nowhere
6 responsive to the question. The question is does
7 he have an opinion or not.

8 THE COURT: The answer would be yes
9 or no. You are trying to explain your answer and
10 that is the next question.

11 Q. The next question is going to be, can you
12 explain --

13 THE COURT: Do you have an opinion?

14 A. Yes.

15 Q. Can you tell this Jury what that opinion is
16 and why that is your opinion?

17 A. Probably under six hours, and the reason for
18 that is as I said before, there was a
19 wide number of variables when someone
20 dies, and so the time of death becomes a
21 range, from when the person was last seen
22 alive, until they were found. So

1 examining the body, the body was still
2 warm to the touch. He was going into
3 rigor mortis. He wasn't in full rigor
4 mortis. And so, based on those two
5 findings, I would probably put his death
6 as under six hours from when I examined
7 him, probably somewhere in the range of
8 four hours, plus or minus an hour or two.

9 MR. BECKER: I have no further
10 questions for Dr. Germaniuk. I do see it is around
11 the lunch hour. I do believe that Defense counsel
12 would need some time to review some items before we
13 return, so should we return at 1:30?

14 MR. INGRAM: I have to say we're
15 probably going to have very few questions, but
16 before we make that determination, we must review
17 the good Doctor's case file. So 1:30 would sound
18 like a good time.

19 THE COURT: Very good. If you folks
20 would be kind enough to be back here by 1:30. I
21 would again remind you of the Court's admonition
22 not to discuss anything about the case in the

1 meantime. Thank you.

2 (Court in recess at 12:10 p.m.)

3 (Resumed in Open Court at 1:30 p.m.)

4 CROSS EXAMINATION BY MR. JUHASZ:

5 Q. Doctor, I want to thank you for taking the
6 time to meet with Mr. Ingram and I over
7 the lunch hour. There's only one thing I
8 want to ask you. You mentioned to
9 Mr. Becker just before the lunch break,
10 that you set the cause of death at four
11 hours, plus or minus one to two hours
12 from when you first examined the body.

13 A. It is an approximation. It can go out as far
14 as six, somewhere in the range of four,
15 plus or minus a few hours.

16 Q. Would you be kind enough to tell the Jury what
17 time you began to examine the body?

18 A. I began to examine the body about 1:00 in the
19 morning.

20 MR. JUHASZ: That is all I have.

21 Thank you.

22 REDIRECT EXAMINATION BY MR. BECKER:

1 Q. That time is an approximation?

2 A. Yes.

3 Q. Could it have been outside of six, four to six
4 hours?

5 A. Yes.

6 Q. Could it be two to four hours?

7 A. Yes.

8 Q. Could it have been six to eight hours?

9 A. Less likely eight, bringing it closer into the
10 six hour range.

11 Q. And the difficulty again in determining the
12 exact cause of death is based upon many,
13 many variables?

14 A. Yes.

15 Q. And your function is not really necessarily to
16 determine the time of death, but the
17 cause and manner, correct?

18 A. Yes.

19 MR. BECKER: Nothing further.

20 RE CROSS EXAMINATION BY MR. JUHASZ:

21 Q. I meant to say time of death and I would think
22 I said cause of death. You understand

1 what we're talking about is the time of
2 death?

3 A. Right.

4 MR. JUHASZ: Thank you.

5 MR. BECKER: Nothing further.

6 THE COURT: You are excused. Thank
7 you very much.

8 MR. BECKER: The State would call
9 Frank Dillon.

10 SGT. FRANK DILLON

11 being duly sworn according to law, on his oath,
12 testified as follows:

13 DIRECT EXAMINATION BY MR. BECKER:

14 Q. Good afternoon. Would you introduce yourself
15 to this Jury, please?

16 A. Sergeant Frank Dillon.

17 Q. And Sergeant, where are you employed at?

18 A. Howland Township Police Department.

19 Q. And how long have you been employed there?

20 A. Sixteen years.

21 Q. Can you briefly tell this Jury the training
22 and background that you have had that has

1 prepared you for that position?

2 A. I went to the basic State of Ohio police
3 academy and have had extensive training
4 beyond that involving all elements of
5 police work in general.

6 Q. And can you please tell this Jury how long you
7 have been employed with the Howland
8 Township Police Department?

9 A. Sixteen years.

10 Q. Now, what are your current duties with the
11 Howland Township Police Department?

12 A. Currently a Detective Sergeant in the
13 investigations division.

14 Q. And how long have you been in that division?

15 A. Since August of 2001.

16 Q. Now I want to direct your attention
17 specifically to the early morning hours
18 of December 12, 2001, probably just after
19 midnight. Were you called out or were
20 you on duty at that time?

21 A. I was called out.

22 Q. And do you recall what you were called out in

1 reference to?

2 A. In reference to a body at a crime scene.

3 Q. And do you recall the address of that crime
4 scene?

5 A. 254 Fonderlac Drive, Southeast.

6 Q. And is that located in Trumbull County?

7 A. Yes, Sir.

8 Q. Now, when you got to the scene, would you
9 please tell this Jury what other officers
10 were present when you got to the scene?

11 A. Patrolman Ray and Patrolman Pollcino.

12 Q. Were there any EMS people there?

13 A. I believe so. I believe two were outside and
14 one was still near the door, the entrance
15 to the house.

16 Q. And was there anyone else there in the
17 residence?

18 A. A female.

19 Q. Do you know who that was?

20 A. She was later introduced to me as Donna
21 Roberts, the victim's wife.

22 Q. And she's the same wife, Donna Roberts, in

1 this case?

2 A. Yes, Sir.

3 Q. Now, when you got to the scene, what is the
4 first thing that you did when you
5 arrived?

6 A. Spoke with the officers that called me there
7 to ascertain what information they got,
8 what they had done so far.

9 Q. And what did you find out they had done?

10 A. I found out that they checked the house for
11 signs of forced entry, and they checked
12 the inside to make sure no one else was
13 in the residence.

14 Q. And was there anyone else in the residence?

15 A. No, Sir.

16 Q. Now, initially, when you arrived did you come
17 in the front door or the side door or
18 where did you come in at?

19 A. The front door.

20 Q. Which would have not been through the garage?

21 A. Yes, Sir, the garage was closed.

22 Q. The garage door was down?

1 A. Yes.

2 Q. Now, when you got to the residence, can you
3 please describe for this Jury where the
4 victim was and how he was positioned?

5 A. The victim was on the floor in the kitchen
6 near the man door, at least from the
7 garage into the kitchen. He was, if you
8 are looking from the living room or the
9 dining room area into the kitchen area,
10 he was on the left side, which would have
11 been the east side of the man door on the
12 floor in the corner by an island that was
13 part of the counter top of the residence.

14 Q. I'm going to show you what has been marked for
15 identification purposes as State's
16 Exhibit 126. I'm going to show you what
17 has been marked for purposes of
18 identification as State's Exhibit 126. I
19 want you to take a look at this and I
20 believe you still have the laser pointer
21 there. Please indicate to us what we're
22 going to see here, and then I want you to

1 note in that photograph anything unusual
2 that may be in that photograph. You see
3 that photograph?

4 A. Yes, Sir.

5 Q. And what is State's Exhibit 126?

6 A. That is 254 Fonderlac Drive, Southeast.

7 Q. And that vehicle that is parked, do you know
8 whose vehicle that is?

9 A. At the time, Detective Sergeant Monroe's
10 vehicle.

11 Q. And the garage door was closed on the left, as
12 you indicated?

13 A. Yes, Sir.

14 Q. And we can't see it on the screen, but I'm
15 going to hand you this Exhibit and I want
16 you to take a look at it and in the lower
17 left hand corner, was there something
18 that was later observed in that
19 photograph?

20 A. Yes, Sir.

21 Q. What is in the lower left hand corner of that
22 photograph?

1 A. There were marks in the grass where it
2 appeared a vehicle had driven across the
3 lawn.

4 Q. Now, I am also going to show you a photograph
5 that has previously been marked as
6 State's Exhibit 69. I'm going to ask you
7 if you recognize State's Exhibit 69?

8 A. Yes, Sir.

9 Q. And what is State's Exhibit 69?

10 A. It is a photo of those marks from the driveway
11 onto the lawn, the corner of the lawn
12 adjacent to the driveway.

13 Q. Were you able to -- State's Exhibit 69 was
14 taken in the daylight, is that correct?

15 A. Yes, Sir.

16 Q. Now, I also want you to look, and without
17 showing the Jury, I would like you to
18 take a look at these photographs that are
19 up here, these larger photographs, and
20 just walk us through each photograph,
21 describing the number on them and what
22 each photographing depicts.

1 A. Exhibit No. 4 is a tin serving tray that was
2 on the dining room table that contained
3 marijuana and drug paraphernalia.

4 Q. Was that marijuana tested or is that based on
5 some knowledge that you had?

6 MR. INGRAM: Stipulated it was
7 marijuana.

8 Q. Is that all that is depicted in State's
9 Exhibit 4?

10 A. Yes, Sir. The same with State's Exhibit 5.

11 Q. State's Exhibit 6?

12 A. What is depicted in State's Exhibit 6?
13 Partial photograph of Mr. Fingerhut and
14 where he was laying on the floor in the
15 residence.

16 Q. Just continue on those photographs, just
17 detailing each one and telling us what
18 the Exhibit numbers are.

19 A. Exhibit No. 7 shows roughly the same
20 photograph, but from, as viewed from the
21 garage as you enter the house. State's
22 Exhibit 8 is a photo from the kitchen

1 area partially showing Mr. Fingerhut's
2 body and blood that is on the floor
3 around his body including what I believe
4 the photo was trying to depict was a
5 partial footprint.

6 Q. Let me ask you about that footprint. Was that
7 footprint there upon your arrival, that
8 blood footprint?

9 A. Yes.

10 Q. And were any of the other officers believed to
11 have left that impression?

12 A. We checked everyone's shoes just to make sure.

13 Q. And that would include the EMS personnel?

14 A. Yes, Sir.

15 Q. And Miss Roberts?

16 A. Yes.

17 Q. And were any of them found to have blood on
18 their shoes?

19 A. No, Sir.

20 Q. Continue.

21 A. Exhibit No. 9 is a photo from the garage area
22 on the step, a picture of the step as you

1 walk up from the garage floor. There's
2 one step before you enter the house that
3 shows that step; again another, what
4 appears to be a partial footprint in the
5 blood and a weapon that is laying on the
6 step, the handgun.

7 Q. I want to ask you about that weapon. Did you
8 happen to speak to Miss Roberts that
9 night about that weapon?

10 A. I believe myself or Sergeant Monroe did.

11 Q. That weapon initially when the officers
12 responded there, was there some concern
13 about maybe that weapon being used?

14 A. Possibly, yes.

15 Q. Was it handled in an appropriate manner?

16 A. Yes, Sir, it was.

17 Q. Initially, it was picked up, I believe by
18 Dr. Germaniuk?

19 A. Initially, I believe by Detective Leshnack.

20 Q. And would he have been wearing any protective
21 clothing when he picked that up?

22 A. He had latex gloves on his hands at the time.

1 Q. What is the purpose of that?

2 A. To prevent any contamination of the weapon as
3 far as fingerprints are concerned.

4 Q. Upon Officer Leshnack opening that weapon,
5 what was discovered inside of the weapon?

6 A. Five unfired rounds, which is a full chamber
7 for that particular weapon.

8 Q. That weapon is what type, semi-automatic?

9 A. It is a revolver.

10 Q. It has five chambers?

11 A. Yes, Sir.

12 Q. And all five were full?

13 A. Yes, Sir.

14 Q. And I believe you have a photograph depicting
15 that?

16 A. Yes, Sir.

17 Q. What Exhibit is that?

18 A. Exhibit No. 10 shows the open cylinder of the
19 handgun and the unfired rounds.

20 Q. Now, that weapon was then retrieved and kept
21 as evidence?

22 A. Yes, Sir, it was.

1 Q. I'm going to hand you what has been marked for
2 purposes of identification as State's
3 Exhibit 251 and ask if you recognize what
4 State's Exhibit 251 is?

5 A. It is the weapon in the photograph.

6 Q. Let's do this. We are going to show you --
7 I'm just going to briefly go back and
8 show you these photographs. This is
9 State's Exhibit 4, is that correct?

10 A. Yes, Sir.

11 Q. What is State's Exhibit 4 again?

12 A. The metal tray containing what appears to be
13 marijuana and drug paraphernalia.

14 Q. And now I'm going to go through these rather
15 quickly here. This is State's Exhibit 5,
16 it is just another view of the marijuana?

17 A. Yes, Sir.

18 Q. And this was in the dining room?

19 A. Yes, Sir, on the table, glass top table.

20 Q. The other day we had Tony Leshnack come in
21 here and he displayed a diagram.

22 A. Yes, Sir.

1 Q. The dining room is where in relation to where
2 Mr. Fingerhut was found?

3 A. The dining room is adjacent to the kitchen.
4 Mr. Fingerhut was found in the kitchen at
5 the other end, opposite the dining room.

6 Q. I'll show you what has been marked as State's
7 Exhibit 6 and ask if you recognize what
8 State's Exhibit 6 is?

9 A. Again that is a photograph of Mr. Fingerhut as
10 he was seen when we arrived.

11 Q. Did you note any injuries to him other than
12 his head?

13 A. The webbing of his left hand.

14 Q. Could you use the laser pointer?

15 A. Right there. (Indicating)

16 Q. That was visible to you?

17 A. Yes, Sir.

18 Q. I'll show you what has been marked for
19 purposes of identification as Exhibit No.
20 7 and ask if you recognize what State's
21 Exhibit 7 is?

22 A. Again that is a photo taken from the garage

1 into the kitchen and in the same position
2 as you saw in the previous photograph.

3 Q. The jacket that he was wearing -- well, I'll
4 get to that. Strike that. Exhibit No.
5 8. Do you recognize that?

6 A. Yes, that is the photograph partially of Mr.
7 Fingerhut's body and the blood stains on
8 the floor, blood on the floor and to the
9 top right of the photo which is kind of
10 not in the picture at this time is
11 where -- when appeared, what we believed
12 at the time may have been a partial
13 footprint in the blood.

14 Q. Again you checked all of the people who were
15 in the house for any blood on their
16 shoes?

17 A. The officers for sure. Sergeant Monroe also
18 participated in that, so we weren't
19 together the whole time, but yes,
20 everyone.

21 Q. I'll show you Exhibit No. 9. Do you recognize
22 State's Exhibit 9?

1 A. That is again the picture from inside the
2 garage showing the weapon that was lying
3 on the step, another partial footprint
4 there.

5 Q. Could you show us the other partial footprint?

6 A. Right there. (Indicating)

7 Q. I'm going to show you State's Exhibit 10, do
8 you recognize State's Exhibit 10?

9 A. That is the weapon that was laying on the step
10 in the previous photo with the cylinder
11 open.

12 Q. Exhibit No. 11.

13 A. Another shot similar to the first one showing
14 Mr. Fingerhut.

15 Q. I'll show you State's Exhibit 12. Do you
16 recognize what State's Exhibit 12 is?

17 A. That is a picture of the door that is standing
18 open, but the door from the garage into
19 the house, into the kitchen.

20 Q. Exhibit No. 13.

21 A. A cup that was on the floor between Mr.
22 Fingerhut's body and the counter top.

1 Q. I think there were some diagrams mentioned by
2 Detective Leshnack of this Pepsi
3 container?

4 A. That is correct.

5 Q. That is in his diagram?

6 A. Yes, Sir.

7 Q. State's Exhibit 14.

8 A. That is a photo of the same area where Mr.
9 Fingerhut had been lying, only farther
10 back in the kitchen taken from a farther
11 back view.

12 Q. Exhibit No. 15.

13 A. A photo of what was lying at Mr. Fingerhut's
14 feet on the floor.

15 Q. Now you were present when Dr. Germaniuk
16 arrived?

17 A. Yes, Sir.

18 Q. And can you tell this Jury just very briefly
19 what you observed Dr. Germaniuk do when
20 he arrived at the scene?

21 A. Dr. Germaniuk talked with the officers at the
22 scene to find out what information we

1 gathered so far, what the circumstances
2 were surrounding the incident that we
3 knew to that point. Then he began his
4 investigation.

5 Q. And what did he do with the body of Mr.
6 Fingerhut?

7 A. Initially, he took photographs of the crime
8 scene and all of the areas around the
9 body and the body itself and then he
10 began to examine the body.

11 Q. And did he do anything with the clothing of
12 Mr. Fingerhut?

13 A. He went through it to look for evidence that
14 was still on the body.

15 Q. Can you tell this Jury how Mr. Fingerhut was
16 dressed?

17 A. He had blue jeans on, white tennis shoes, high
18 top tennis shoes, white socks. He had on
19 a black long sleeve T-shirt undershirt
20 and over that, he had I believe a white,
21 with red stripes, Cincinnati Reds
22 baseball jersey, and over that, his

1 Cincinnati Reds coat.

2 Q. Now, you were present when Dr. Germaniuk
3 undressed him?

4 A. Yes.

5 Q. Did anything -- was anything found when
6 Dr. Germaniuk undressed him?

7 A. He found a bullet between the layers of the
8 clothing.

9 Q. I'm going to put up Exhibit No. 16. Do you
10 recognize what State's Exhibit 16 is?

11 A. It's a bullet.

12 Q. Is that the bullet that was recovered from his
13 clothing?

14 A. I can't say exactly yes.

15 Q. If I hand you the full picture, it is hard to
16 get on the screen.

17 A. Yes, Sir, it is.

18 Q. That is the bullet that was recovered from his
19 clothing?

20 A. Yes, Sir.

21 Q. I'm going to show you State's Exhibit 17. If
22 you could tell us what State's Exhibit 17

1 is?

2 A. It is a close-up of the injury to the webbing
3 of Mr. Fingerhut's left hand.

4 Q. I'm going to show you Exhibit No. 19.

5 A. That is the stair well that leads into the
6 basement which is basically directly, if
7 you stand in the garage and look through
8 the door and look straight, that is what
9 you see ahead of you on the opposite side
10 of the kitchen.

11 Q. What is the significance of that photograph,
12 State's Exhibit 19?

13 A. We located a bullet hole in the wall.

14 Q. Can you please direct the Jury where that
15 bullet hole is?

16 A. I'm going to say it is right there.

17 (Indicating)

18 Q. Now, I'm going to show you State's Exhibit 18
19 and see if you recognize what this view
20 is?

21 A. I believe it is a photograph taken from
22 standing on the steps, leading to the

1 basement looking back towards Mr.
2 Fingerhut's body and the doorway from the
3 garage into the kitchen.

4 Q. And way in the back, we see some red directly
5 in the background?

6 A. I believe that is Mr. Fingerhut's body.

7 Q. I am talking about beyond that, higher above
8 that.

9 A. That would be the car parked in the garage.

10 Q. I'm going to show you State's Exhibit 20 now.
11 Do you recognize what State's Exhibit 20
12 is?

13 A. That is the hole in the wall we located in the
14 stair well.

15 Q. Now eventually that was something -- was
16 something done to that wall?

17 A. Yes, we cut a hole in the wall, in the dry
18 wall to see what was behind it.

19 Q. I'm going to show you Exhibit No. 97 and 141.
20 This is State's Exhibit 97. Do you
21 recognize what that is?

22 A. Yes, that is a close-up photo of the hole in

1 the wall.

2 Q. And I'm going to show you State's Exhibit 141.

3 Do you recognize what that is?

4 A. That is a distant photo, right there would be
5 where the hole was found. I believe they
6 taped a ruler underneath it for that
7 photo.

8 Q. Was a projectile ever recovered from that
9 wall?

10 A. Yes, Sir, it was.

11 Q. I'm going to hand you what has been marked for
12 purposes -- strike that. When you got to
13 the scene, you also determined some other
14 things such as medications that may be in
15 the residence?

16 A. Yes, Sir. Usually Dr. Germaniuk likes to know
17 what medications may be at the residence
18 so that when he does his toxicology
19 reports for his investigation, he can
20 compare those to what is in the
21 residence.

22 Q. And if I can have you speak a little bit

1 closer to the microphone. Now, when you
2 got to the residence, were there any
3 animals in the house?

4 A. Yes, two dogs.

5 Q. Where were those two dogs at when you arrived?

6 A. When I arrived, they were in the bedroom.

7 Q. What were they doing in the bedroom?

8 A. Laying underneath the bed, near the edge where
9 you could see them.

10 Q. Now eventually Dr. Germaniuk moved this body,
11 is that correct?

12 A. Yes, Sir.

13 Q. And was there anything discovered in addition
14 to the projectile after he moved the
15 body, underneath the victim?

16 A. Not that I can recall.

17 Q. Before he undressed him and he rolled him
18 over, was anything discovered on the
19 floor beneath him?

20 A. I believe there might have been some keys.

21 Q. If I show a photograph, would that maybe
22 refresh your memory?

1 MR. INGRAM: You can lead him, go
2 ahead.

3 Q. I'm going to show you a photograph and we'll
4 mark this --

5 MR. INGRAM: Why don't you mark this
6 as a Joint Exhibit?

7 MR. BECKER: We'll mark this as
8 Joint Exhibit 404. I'm sorry, mark it as Joint
9 Exhibit 1.

10 Q. I'll show you what has been marked for
11 identification as Joint Exhibit 1 and ask
12 if you recognize that item?

13 A. Can I see it up close?

14 Q. It is the bottom picture.

15 A. Okay.

16 Q. Do you recognize that now?

17 A. Yes, it is a key.

18 Q. Were you able to determine where that key fit?

19 A. I can't answer that question.

20 Q. It was retrieved as evidence?

21 A. Yes.

22 Q. Also depicted after Dr. Germaniuk removed the

1 clothing were some items or was an injury
2 to Mr. Fingerhut after you removed his
3 clothes?

4 A. Yes, Sir.

5 Q. And what is that depicting?

6 A. That is a graze wound that was on his right
7 shoulder.

8 Q. That is Joint Exhibit 1. Both of them are
9 Joint Exhibit 1. There are two
10 photographs on one page that is marked
11 Joint Exhibit 1. And in addition to the
12 clothing that was removed from the
13 victim, was there some valuables that
14 were on his person?

15 A. I believe jewelry, and a lot of gold jewelry
16 on his person.

17 Q. I'm going to hand you what I'm going to mark
18 as State's Exhibits 404 and 405. I'll
19 hand you State's Exhibit 404 and State's
20 Exhibit 405 and ask you what those
21 Exhibits are?

22 A. Yes, Sir.

1 Q. What is State's Exhibits 404 and 405?

2 A. Mr. Fingerhut's wallets.

3 Q. And can you tell this Jury where they were
4 discovered at?

5 A. They were discovered on his person; one in his
6 left rear pocket of his pants and the
7 other in the right rear pocket of his
8 pants.

9 Q. And can you tell this Jury if there was any
10 U.S. currency in any of those wallets?

11 A. Yes, Sir.

12 Q. How much currency was in those wallets?

13 A. Off the top of my head, I believe it was
14 somewhere in the area of \$231.

15 Q. And those -- strike that. Did you personally
16 look for any signs of forced entry into
17 that residence?

18 A. Yes, Sir, I did.

19 Q. Did you discover any signs of forced entry?

20 A. No, Sir, I did not.

21 Q. When you arrive at the scene, is it normal for
22 you to prepare, I guess what we call, it

1 is a type of form that you fill out?

2 A. Yes, Sir.

3 Q. As part of your investigation?

4 A. Yes, Sir. We have a death investigation
5 report that we fill out.

6 Q. And it has standardized questions?

7 A. Yes, Sir.

8 Q. And you conducted one of those?

9 A. Yes, Sir.

10 Q. Involved in this case?

11 A. Yes, Sir.

12 Q. Now, after you do your preliminary
13 investigation and you talk to the
14 officers and talk to the EMS, do you then
15 finally get an opportunity to speak to
16 Miss Donna Roberts?

17 A. Yes, Sir, initially, I talked to her.

18 Q. And in your initial conversations with her,
19 did she tell you what -- can you relate
20 to this Jury what she told you happened
21 that night when she came home at
22 approximately 12:00 p.m. on December 12?

1 A. She said that she had come down the street and
2 hit the door opener for the overhead
3 garage door and noticed that the light
4 came on and the door was going down, and
5 that I believe her husband's car was not
6 in the garage. So she hit the button
7 again to open the door and pull in the
8 garage on the right hand side where she
9 usually parks her car.

10 Q. And did she tell you a reason why or did she
11 tell you anything that she felt unusual
12 about the garage door going down instead
13 of up?

14 A. I believe she said that she's used to it going
15 up and didn't realize it was going down
16 until she started to pull into the
17 driveway. She thought that was unusual.

18 Q. What did she tell you when she pulled into the
19 garage that she did?

20 A. She got out of the car, walked around the back
21 of the car and as she walked in to the
22 doorway, she noticed that the door was

1 opened from the garage into the kitchen
2 and then she noticed her husband on the
3 floor.

4 Q. Did she indicate to you that she had seen any
5 weapons?

6 A. No, Sir, she did not.

7 Q. Now when you got to the scene and spoke to
8 Miss Roberts, how was her condition or
9 emotional state when you spoke to her?

10 A. She was hysterical, excited. She would get
11 wound up and then calm down and back and
12 forth.

13 Q. Where did she tell you that she had been when
14 she had come home?

15 A. She told me that when she walked into the
16 house and saw her husband, she grabbed a
17 portable phone off the kitchen counter
18 and ran to the bedroom and called 911 and
19 then she told me that she realized at
20 that time that someone may still be in
21 the house, so she ran out the front door
22 and the police arrived.

1 Q. Did she describe for you or give you any
2 indication as to what was missing from
3 the residence?

4 A. Eventually she told us that her husband's car
5 was not there.

6 Q. Was she able to give a description of that
7 vehicle?

8 A. Yes, Sir, she did.

9 Q. And how did she describe it?

10 A. She described it as a silver Chrysler 300-M.

11 Q. Now, did she describe for you any of Mr.
12 Fingerhut's routines in terms of what he
13 would do when he came home?

14 A. Yes. At one point she told us that Mr.
15 Fingerhut is a routine person. He
16 usually comes home around 9:30, walks in
17 the house, puts his green mug on the
18 table. I believe she said he takes his
19 two wallets out and sets those also on
20 the table and then he reviews the daily
21 mail, which she says that she opens every
22 day and lays out for him.

1 Q. Did she tell you whether or not that man door
2 that you described, whether -- how that
3 door is kept locked or secured?

4 A. She told me -- I asked her if it is locked or
5 unlocked routinely and she said they
6 leave it unlocked, because they felt
7 secure in the automatic garage door
8 system that they had.

9 Q. Now did she reveal to you that Mr. Fingerhut
10 in fact carried two wallets?

11 A. Yes, she told us that he puts them both on the
12 table.

13 Q. Now I suppose at some point, then you were
14 joined by another officer from the
15 Howland Police Department at the scene?

16 A. Yes, Sir, Detective Sergeant Monroe arrived
17 shortly after.

18 Q. And he's now the Chief of Police in Howland?

19 A. Yes, Sir.

20 Q. At some point then, you began to speak to, you
21 and Detective Monroe jointly talked to
22 Miss Roberts?

1 A. Off and on we both did, yes.

2 Q. And did you get to a point in time where you
3 asked her about her activity prior to
4 coming home that evening?

5 A. I believe so.

6 Q. Were you present in that conversation?

7 A. Yes.

8 Q. And did she tell you what she had done earlier
9 that evening?

10 A. She said she had gone to Wal-Mart and Super
11 K-Mart and Giant Eagle.

12 Q. Did she tell you why she had gone to K-Mart,
13 Wal-Mart and Giant Eagle?

14 A. She said she had spoken to her husband on the
15 phone and he told her he would be a
16 little late, that she should go out
17 shopping. So she went out and shopped.

18 Q. Did she indicate when she left her residence
19 to go on this shopping spree?

20 A. I believe she said he called around nine, so
21 it would have been shortly after that.

22 Q. Did she indicate what she purchased at any of

1 these stores?

2 A. The only thing we knew for sure that she
3 purchased was at the Wal-Mart store.

4 Q. And how did you know that?

5 A. Because she had offered to us that the bag was
6 on the kitchen table, which we found the
7 receipt in it. I believe some make-up
8 and some cigarette lighters.

9 Q. I'm going to hand you what has been marked as
10 State's Exhibit 396 and ask if you know
11 what 396 is?

12 A. That is the Wal-Mart receipt.

13 Q. Can you tell this Jury what the date and time
14 is on that receipt?

15 A. 12-11-01 and the time is 2137, which is 9:37
16 p.m.

17 Q. Now, tell this Jury what Miss Roberts told
18 you -- well, let me ask you this. Was
19 she asked if those were the only places
20 she had been?

21 A. I believe so.

22 Q. What was her response, if you recall?

1 MR. INGRAM: I'll object unless we
2 can have a more definite response to the previous
3 question.

4 Q. Do you recall her being asked if she had been
5 to any other locations?

6 A. I only recall Wal-Mart, Giant Eagle and Super
7 K-Mart.

8 Q. Did you ask her where she had eaten dinner
9 that night?

10 A. I believe Sergeant Monroe may have.

11 Q. Now, tell this Jury what Miss Roberts told
12 you -- strike that. Eventually the car
13 that Miss Roberts returned in, that red
14 Chrysler was moved from the garage, is
15 that correct?

16 A. Yes, Sir.

17 Q. Were you present when that was done?

18 A. Yes, Sir.

19 Q. Was there anything found underneath where that
20 Chrysler, the red Chrysler was parked at?

21 A. A pair of glasses, the frame and a lens.

22 Q. I'm going to hand you what has been marked for

1 purposes of identification as State's
2 Exhibits 263 and 259 and ask if you can
3 recognize those? Would you please open
4 those? Please refer to the numbers that
5 you are looking at.

6 A. Exhibit No. 259 is the glass frames with the
7 missing lens.

8 Q. I'm sorry, that is 254. That is Exhibit 254
9 not 259.

10 A. State's Exhibit 253 is the lens that was on
11 the floor and fits in these frames.

12 Q. And those items are the same or substantially
13 the same condition as when you first
14 found them?

15 A. Yes, Sir.

16 Q. Eventually a video tape was made of that
17 scene?

18 A. Yes, Sir.

19 Q. Who would have made the video tape of the
20 scene at that location?

21 A. I took some of it and Chief Monroe took some
22 of it, also.

1 Q. 254 should be the lens and the other one
2 should be the actual glass. 254 is the
3 eye glasses and 253 is the lens. Now,
4 during the time you were investigating
5 and at the scene, you and your fellow
6 officers were searching for evidence and
7 doing the things that you would normally
8 do in an investigation?

9 A. Yes, Sir.

10 Q. Where was Miss Roberts at when this was going
11 on?

12 A. In the master bedroom.

13 Q. Can you tell this Jury what Miss Roberts was
14 doing in the master bedroom while you and
15 your fellow officers were investigating
16 this crime scene?

17 A. We wanted her to relax and compose herself.
18 We could hear repeated shouting of what
19 she had seen and her distraughtness over
20 that, and then she would get quiet for
21 awhile and then we would hear it some
22 more.

1 Q. Do you recall any of the words that she used
2 or any of the things that she said?

3 A. "Oh, my poor Robert. I can't believe somebody
4 stabbed him in the face. All of that
5 blood." Things of that nature.

6 Q. And what would happen when you and your fellow
7 investigators would speak about this
8 case, and I say what would happen, what
9 would she do when you and your fellow
10 officers would discuss the investigation
11 in the other rooms?

12 A. At one point, I happened to notice that when
13 we would begin to talk pretty
14 extensively, we would no longer hear her
15 shouting.

16 Q. And did there come a time when you actually
17 went back to the bedroom yourself?

18 A. Yes, Sir, I went back to the bedroom to check
19 on her at a period where we didn't hear
20 her making any noise and I found her
21 standing, leaning against the door, the
22 edge of the doorway there, the door frame

1 and she appeared to be listening.

2 MR. INGRAM: Objection.

3 THE COURT: Sustained. The Jury is
4 to disregard.

5 Q. What did she do when she saw you?

6 A. I startled her and then she began to shout
7 again.

8 Q. Now, eventually Miss Roberts left the
9 residence, is that correct?

10 A. Yes, Sir.

11 Q. Do you recall how it is that she came to leave
12 that residence?

13 A. Chief Monroe had asked her if there were any
14 family members that could come and get
15 her and be with her at her time of grief
16 and she gave Chief Monroe the information
17 in reference to her brother in
18 Austintown.

19 Q. And in fact, did someone show up to get her?

20 A. Yes, her brother, Ralph eventually showed up
21 at the scene.

22 Q. Was anyone else present with Ralph?

1 A. His wife, Rita.

2 Q. And do you recall approximately what time they
3 left the residence?

4 A. I want to say around 1:50, 1:45. I don't know
5 exactly. I would have to refer to my
6 notes.

7 Q. Now, do you recall anything she may have said
8 when she left and was directed to you and
9 your fellow officers about searching that
10 residence?

11 A. Yes. Chief Monroe explained to her that the
12 house was a crime scene and we were going
13 to need to finish procession and it may
14 take a long time and that we were going
15 to have to search the house and
16 everything in it, including the garage
17 and the cars.

18 Q. And do you recall what her response was?

19 A. Miss Roberts stated, "Do whatever you have to
20 do. I just want you to get this person
21 or get this guy."

22 Q. Now, at some point, some other evidence was

1 found that included some letters?

2 A. Yes, Sir.

3 Q. Were you present when those letters were
4 found?

5 A. No, Sir, I was in a different room.

6 Q. And eventually Anthony Leshnack, who is a
7 Sergeant with the Trumbull County
8 Sheriff's Department arrived?

9 A. Yes, Sir.

10 Q. Were you present when he arrived?

11 A. Yes, Sir.

12 Q. Do you know the reason he was called to the
13 scene?

14 A. I believe Chief Monroe called him to the scene
15 to assist in processing.

16 Q. And we have already heard from Officer
17 Leshnack as to what he did?

18 A. Yes, Sir.

19 Q. Eventually, you left the scene of the
20 residence?

21 A. Yes, Sir.

22 Q. And when you left the scene approximately what

1 time was it?

2 A. It was around 6:30 in the morning on the 12th
3 of December.

4 Q. I want to direct your attention to December
5 12th of 2001 at approximately 1:00 p.m.,
6 I believe you again had a chance to meet
7 with Donna Roberts?

8 A. Yes, Sir.

9 Q. And can you explain to this Jury how that came
10 about and where that happened at?

11 A. I believe Chief Monroe had spoken to Donna and
12 arranged a meeting for us to sit down and
13 talk with her to further our
14 investigation at the Howland Police
15 Department. She came there, I believe
16 with her brother, Ralph, and another
17 brother.

18 Q. And when she arrived there on December 12,
19 2001, had you had a chance to review any
20 other evidence in this case?

21 A. I don't know that I reviewed it. I know what
22 was there at the time.

1 Q. Are you referring to the letters?

2 A. In reference to the letters, I had not
3 reviewed those.

4 Q. So, when she arrives on December 12th, which
5 is 1:00 p.m., it is about 12 hours when
6 you had last seen her, maybe 11, she's
7 there at the Howland Police Department,
8 and do you recall discussing with her
9 basically her background and relationship
10 with Mr. Fingerhut?

11 A. Yes, Sir, when they met, how they met. How
12 long they had been together.

13 Q. Can you tell this Jury basically the story she
14 reiterated to you, when they met?

15 A. I believe she told us that they met in Florida
16 in 1983 and were married somewhere around
17 that time for several years, and then
18 they gotten a divorce, which she said was
19 Mr. Fingerhut's idea to protect their
20 assets.

21 Q. And did she indicate to you what she did when
22 she was living in Florida?

1 A. She said she worked for a plastic surgeon
2 there. She was his only office person.
3 She assisted in doing the office work and
4 at times participated in treating the
5 patients, whatever assistance he needed
6 in that respect.

7 Q. Did she indicate to you any type of travel she
8 may have done with the doctor?

9 A. She told us that she had gone to Israel, I
10 believe at least once, to treat soldiers
11 there who were wounded in the war that
12 was going on there at the time.

13 Q. Did she tell you what type of injuries she
14 helped treat?

15 A. I believe it was gunshot wounds and skin graft
16 type injuries.

17 Q. Now did she tell you what type of relationship
18 that she and Mr. Fingerhut had together
19 in December of 2001?

20 A. She said they got along fine. They were happy
21 together.

22 Q. Now I want you to tell this Jury, during the

1 time that you discussed Mr. Fingerhut's
2 relationship, what type of affection did
3 she express for Mr. Fingerhut?

4 A. She said he was a good man, that he did
5 everything for her. He took care of her,
6 told her -- gave her an allowance, told
7 her how to spend money as far as when she
8 would make purchases, and they had
9 numerous credit cards. She would consult
10 him as to which credit card to use, so
11 that they kept them going or whatever
12 reason that may have been.

13 Q. Did she express to you any financial problems
14 they were experiencing?

15 A. None. She didn't say anything about that.

16 Q. In terms of their relationship, did she
17 describe it as a loving relationship or
18 one filled with hate and animosity?

19 A. It was a loving relationship.

20 Q. And did she relate to you any type of physical
21 abuse that may have been occurring?

22 A. Not that I recall.

1 Q. Did you discuss the ownership of any firearms
2 that Miss Roberts may have had?

3 A. Yes, I believe we did.

4 Q. And did you discuss any firearms that Mr.
5 Fingerhut owned?

6 A. Yes.

7 Q. And what did she tell you about the firearms?

8 A. From what I remember, I believe there were
9 three that she described. A Walther PPKS
10 380 caliber handgun which she had given
11 to the Doctor in Florida as a gift. A
12 Smith and Wesson .38 revolver, a Taurus
13 revolver. And then she described another
14 gun which she didn't know the make of,
15 that as she eventually described it, we
16 assumed it was a hammerless revolver.

17 Q. Did she advise whether she had in her
18 possession all of these firearms?

19 A. The Walther, she told us she had given that to
20 the doctor in Florida, and she had
21 reported a .38 Smith and Wesson stolen
22 out of her vehicle in Warren.

1 Q. Did you discuss with her then again, go over
2 again the events of December 11th in the
3 evening up until finding her husband
4 deceased?

5 A. I believe at that time, again, she spoke of
6 leaving work around five 5:15 or 5:30,
7 stopping at Giant Eagle to get chicken
8 for her dogs. She fed them rotisserie
9 chicken that they make at Giant Eagle. I
10 don't know if at that time for sure or
11 not she spoke of going to Red Lobster and
12 having dinner.

13 Q. Only tell us what you know, what you recall.

14 A. Okay.

15 Q. Was she able to describe to you the last time
16 she saw Robert Fingerhut alive?

17 A. Yes, Sir. She said that 8:00 on the morning
18 of the 11th, she saw him as he was
19 getting ready for work. She remained in
20 bed and laid around, I believe she told
21 us until 10:00, at which time she got up
22 and washed her hair and put her make up

1 on and took care of the dogs. She told
2 us she had gone to work around 12:30 at
3 the Warren Greyhound bus station and was
4 there until 5:15 or 5:30.

5 Q. And when the Defendant would refer to her
6 dogs, did she have a name that she
7 referred to them or call them something
8 else?

9 A. Her girls.

10 Q. And when this Defendant told you she was at
11 work, did she then tell you where she
12 went to after work on December 11th? I
13 am talking about your speaking to her on
14 December 12, 2001, did she tell you where
15 she went after work?

16 A. Without referring to any notes, I get
17 confused.

18 Q. Would you like to refer to your notes?

19 MR. INGRAM: No problem.

20 Q. I am referring to the events of December 12,
21 2001 at approximately 1:00 p.m. at the
22 Howland Police Department.

1 A. Okay.

2 Q. You created a report relating the conversation
3 you had with her that day?

4 A. Chief Monroe did.

5 Q. Did you not write a report that day?

6 A. No, I just see his.

7 Q. Having seen his report, does that refresh your
8 memory?

9 A. Yes.

10 Q. On December 12, 2001 at 1:00 p.m., do you
11 recall seeing her -- or I'm sorry, having
12 her tell you where she went to after she
13 left the Greyhound bus station on
14 December 11?

15 A. Yes, Sir.

16 Q. Where did she tell you she went?

17 A. Went to Giant Eagle and purchased a roast
18 chicken for her dogs.

19 Q. Do you have an independent recollection now
20 having read it?

21 A. I stayed with her while she answered these
22 questions.

1 Q. After she went to get the chicken at Giant
2 Eagle, did she indicate where she went
3 after that?

4 THE COURT: Approach for a minute,
5 please.

6 (SIDE BAR DISCUSSION OFF THE RECORD AND OUT OF
7 HEARING)

8 Q. I won't ask you about anything she told you.
9 Let's close that up. Detective, during
10 the conversation of December 12, 2001,
11 did she indicate that she was present
12 with anyone on December 11th?

13 A. I don't recall.

14 Q. Let's back up here.

15 MR. INGRAM: You said we're not
16 going to go to the book, now we're going to the
17 book. May we approach?

18 (SIDE BAR DISCUSSION, OFF THE RECORD AND
19 OUT OF HEARING)

20 THE COURT: For the record, counsel
21 has agreed that at the appropriate time, we'll put
22 the present conversation on the record of what was

1 conducted at Side Bar, is that correct?

2 MR. INGRAM: Yes, Sir.

3 MR. BECKER: Yes, Sir.

4 Q. I want to go back and I want to direct your
5 attention to some things that you did in
6 the evening of December 12, 2001. I
7 believe at that point, you were called in
8 the evening of December 12, 2001 to go to
9 a location in the City of Youngstown?

10 A. Yes.

11 Q. And what were you called to go to the City of
12 Youngstown for? What had been found in
13 the City of Youngstown?

14 A. They had located the silver Chrysler 300-M
15 that belonged to Mr. Fingerhut.

16 Q. And can you tell the Jury where that vehicle
17 was found?

18 A. On Pershing Avenue and Victoria.

19 Q. Can you describe the condition of that
20 vehicle?

21 A. It was in normal condition other than the
22 interior had blood on it -- the exterior

1 had some blood on it.

2 Q. And do you know the location where that
3 vehicle was found? How close that is to
4 Wirt Street?

5 A. It is approximately three blocks.

6 Q. And do you know, can you tell this Jury who
7 was arrested on December 21, 2001 in a
8 house on Wirt Street?

9 A. Nate Jackson.

10 Q. I'm going to show you some photographs
11 relating to that motor vehicle. I'm
12 going to show you State's Exhibit 178 and
13 ask if you recognize what Exhibit No. 178
14 is?

15 A. Yes. Those are the keys in the ignition of
16 the vehicle as it was found.

17 Q. They were found like that?

18 A. Yes, Sir.

19 Q. Now, I want to have you take a look at State's
20 Exhibit 269 and ask if you recognize what
21 State's Exhibit 269 is?

22 A. The keys that were in the vehicle.

1 Q. Which vehicle?

2 A. The silver Chrysler 300-M.

3 Q. And were they obtained by you that night in
4 Youngstown?

5 A. Yes, Sir, by myself and Chief Monroe.

6 Q. Now, I want to direct your attention to the
7 next day, which was December 13, 2001.
8 Do you know where Vista Windows is?

9 A. Yes, Sir.

10 Q. Did you go to Vista Windows?

11 A. Yes, Sir.

12 Q. Where is that located?

13 A. Elm Road, Bazetta Township.

14 Q. What was your purpose in going to Vista
15 Windows on December 13, 2001?

16 A. To speak to an employee there.

17 Q. Who?

18 A. Santiago Mason.

19 Q. Why did you need to speak to Santiago Mason?

20 A. Mrs. Roberts had told us that she had a weapon
21 stolen in the City of Warren and reported
22 it stolen and that is the person she said

1 stole the weapon from her vehicle.

2 Q. And you spoke to Mr. Mason that day?

3 A. Yes, Sir.

4 Q. What did you tell him that you wanted to do
5 with him? What did you tell him you
6 wanted to do that day?

7 A. We asked him to meet us at the Howland Police
8 Department when he got off work to speak
9 to him about that incident.

10 Q. Did you do that?

11 A. Yes, Sir.

12 Q. Was Santiago Mason on December 13, 2001 a
13 suspect in your investigation?

14 A. No, Sir.

15 Q. He was not a suspect in the Fingerhut murder?

16 A. Not to my knowledge.

17 Q. Did you want to speak to him regarding the
18 firearm?

19 A. Yes, Sir.

20 Q. And how did you have him come to the police
21 station?

22 A. He couldn't drive, his boss was going to drive

1 him there.

2 Q. And were there any, I guess, precautions that
3 you took that he would arrive there at
4 the station?

5 A. Yes, Sir, we had our marked patrol cars along
6 the way parked and unmarked cars to
7 guarantee that he would stop at the
8 station, because we wanted to speak to
9 him, just in case he decided he didn't
10 want to come there.

11 Q. He did come and speak to you?

12 A. Yes, Sir, he did.

13 Q. And eventually he was arrested on that date?

14 A. Yes, Sir, he was.

15 Q. And arrested for what?

16 A. Warrant that Donna Roberts had filed for his
17 arrest in reference to the theft of the
18 gun.

19 Q. And you again, the date that he was arrested
20 was what date?

21 A. December 13, 2001, I believe.

22 Q. Now, on December 14, 2001, I believe you had

1 an occasion to go to Youngstown again, to
2 the Greyhound bus terminal in Youngstown?

3 A. Yes, Sir.

4 Q. What was your purpose in going to the
5 Greyhound bus terminal on December 14th?

6 A. To interview employees there with reference to
7 any knowledge they may have had in
8 reference to Mr. Fingerhut's activities
9 on the day he died.

10 Q. And while you were there, were you able to
11 obtain some video tapes?

12 A. Yes, Sir, I did.

13 Q. And what were those video tapes of?

14 A. They were video tapes from the bus terminals
15 in-house surveillance closed circuit T.V.
16 system.

17 Q. And we saw the other day, an Exhibit that was
18 marked as an edited version of those
19 things. Do you know who would have
20 edited those tapes?

21 A. I did.

22 Q. I am going to show -- who gathered those

1 tapes?

2 A. I did.

3 Q. I'm going to show you what has been marked --

4 I'm going to show you State's Exhibit

5 406. I'm going to hand you State's

6 Exhibit 406 and ask if you recognize what

7 State's Exhibit 406 is?

8 A. Yes, Sir, they are the video tapes that I took

9 on the 14th.

10 Q. And who did you retrieve those from?

11 A. From the deputy, Jose Sanchez, actually

12 through the head of security at the time,

13 who was Michael Diaz.

14 Q. And those video tapes, you then took and I

15 guess made, for lack of a better term,

16 the composite that we saw the other day?

17 A. Yes, Sir.

18 Q. And that was just for the record, State's

19 Exhibit 319?

20 A. Yes, Sir.

21 Q. On December 15, 2001, did you again see the

22 Defendant in this case, Donna Roberts?

1 A. Yes, Sir.

2 Q. And can you tell this Jury how it came about
3 that you saw the Defendant, Donna Roberts
4 on Saturday, December 15, 2001?

5 A. She agreed to come to the police department
6 again to speak with us concerning the
7 investigation.

8 Q. And who did she come to the police station
9 with this time?

10 A. Her attorney.

11 Q. Do you remember what his name was?

12 A. Stephen Chuparkoff.

13 Q. Now was this conversation recorded?

14 A. Yes, Sir, it was.

15 Q. And do you recall who was present with you
16 besides the Defendant and her attorney?

17 A. Chief Monroe.

18 Q. Now eventually then, after you took a
19 statement from her, did you go to another
20 location with her?

21 A. Yes, Sir.

22 Q. Where did you go to?

1 A. Her residence.

2 Q. And who else went to the residence with you
3 and Miss Roberts?

4 A. Her attorney and Chief Monroe and I believe
5 her son.

6 Q. And what was the purpose of going to her
7 residence on December 16, 2001?

8 A. We were going to make some phone calls.

9 MR. INGRAM: I'm sorry, that is
10 December 15th.

11 Q. And those phone calls were made?

12 A. Yes, Sir.

13 Q. And I believe Detective Sergeant Monroe --
14 well, strike that. What did Detective
15 Sergeant Monroe bring with him?

16 A. A tape recorder to record the phone calls.

17 Q. Who would have listened in on the phone calls
18 that she made?

19 A. I believe I did.

20 Q. Was it you or Detective Monroe?

21 A. I'm not sure if we both did or just me.

22 Q. Those calls were recorded, is that correct?

1 A. Yes, Sir.

2 Q. While were you at the house, did she further
3 describe her relationship with Robert
4 Fingerhut?

5 A. Yes, Sir.

6 Q. And when she was there, did she start to
7 discuss the religious aspects of their
8 relationship?

9 A. Yes, Sir, she did.

10 Q. What religion did she indicate they were?

11 A. Jewish.

12 Q. What did she indicate was there marital status
13 in the Jewish religion?

14 A. They were still married.

15 Q. And did she present to you some documentation
16 or something?

17 A. She opened a scroll type of thing that
18 looked -- well, she told us it was
19 written in Hebrew. It was their marriage
20 doctrine or something of that nature.

21 Q. Now the next day, December 16, 2001, while you
22 were at the residence -- I'm sorry,

1 strike that. The next day, December 16,
2 2001, did you go anywhere else on that
3 day or go back to her residence?

4 A. I believe we went to Youngstown.

5 Q. And where did you go in Youngstown on that
6 date?

7 A. To the Days Inn Motel.

8 Q. What was your purpose in going to the Days Inn
9 Motel?

10 A. To check on records on Nate Jackson staying
11 there.

12 Q. I'm going to hand you what has been marked
13 previously as identification as State's
14 Exhibits 311-A and B. When you got to
15 the Days Inn -- well, I'm going to hand
16 you State's Exhibits 311-C, D and E. I'm
17 sorry, just 311-E -- and 311-D, and ask
18 if you recognize what 311-D and E are?
19 When you refer to these, please refer to
20 the numbers on the back. State's Exhibit
21 311-D and E.

22 A. State's Exhibit 311-E is a receipt for the

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1 phone calls that were made while the room
2 was being used. It is dated December 16,
3 2001 at 7:31 a.m. And State's Exhibit
4 311-D is a computer printout of the phone
5 numbers that I believe were called from
6 the room and the total number of charges
7 for those phone calls.

8 Q. What room number were those? Did they
9 indicate where they were called from?

10 A. Number 129.

11 Q. At the Days Inn in Boardman?

12 A. Yes.

13 Q. You obtained those personally?

14 A. Myself and Chief Monroe, yes.

15 Q. There was later a time when you had to go back
16 to that Days Inn, is that correct?

17 A. Yes, Sir.

18 Q. And I believe that date was December 18th?

19 A. I believe so.

20 Q. Who were you present with on December 18th of
21 2001?

22 A. Originally, Lieutenant Heaver from the

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1 Boardman Police Department, Special Agent
2 Ed Lulla from the Ohio State Bureau of
3 Criminal Identification and
4 Investigation.

5 Q. And when you were there on December 18, 2001,
6 did you have them run a -- I guess a
7 credit card scan or some type of scan
8 through a machine?

9 A. Yes, Sir.

10 Q. What was the purpose of that?

11 A. To try to determine if the printout, the time
12 stamp on the credit card receipt printout
13 was accurate or not.

14 Q. And I believe that originally, you also
15 obtained a receipt that was marked as
16 State's Exhibit 311-A, or I'm sorry,
17 311-B which was the credit card receipt?

18 A. Yes, Sir.

19 Q. And that was actually received from
20 Mr. Diamantes?

21 A. I believe so, yes.

22 Q. And you went back on the 18th to confirm the

5 6 6 6

1 time on the receipt that you got from

2 Officer -- or from Mr. Diamantes?

3 A. Yes, Sir.

4 Q. Were you present when the credit card scan was
5 run again?

6 A. Yes, Sir, I was.

7 Q. And was there a problem with the time on that
8 credit card receipt?

9 A. It was off. It was not accurate.

10 Q. Do you recall how much it was off by?

11 A. I know the time roughly was 46 minutes off. I
12 believe it was 46 minutes fast.

13	Q. What is your unit number?
----	------------------------------

14 A. 412.

15 Q. Now, I'm going to hand you State's Exhibit
16 311-C. I'll ask if you recognize what
17 State's Exhibit 311-C is?

18 | A. Yes, Sir.

19 Q. What is State's Exhibit 311-C?

20 A. It is the receipt that we printed while I was
21 there to try to determine if the machine,
22 the time on the machine, the time stamp

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1 on the machine was accurate or not.

2 Q. And what is the time on the receipt, the
3 printed time?

4 A. The time printed on the receipt is 12:40.

5 Q. What was the actual time when that receipt was
6 printed?

7 A. 11:54 a.m. It was 12:40 p.m., the actual time
8 was 11:54 a.m.

9 Q. So the machine was fast or slow?

10 A. Fast.

11 Q. Now, Detective, I want to ask you about -- I
12 want to ask you about the firearm that
13 you previously testified to. That item
14 was eventually submitted to the Bureau of
15 Criminal Identification and
16 Investigation?

17 A. Yes, Sir.

18 Q. Exhibit No. 251?

19 A. The one that was at the scene?

20 Q. Yes.

21 A. Yes, Sir.

22 Q. And all of those items would have been

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1 transported including the firearm by
2 Detective Paul Monroe, is that correct?

3 A. Yes, Sir.

4 Q. If we could -- could we take a small break so
5 I can set up the television again for
6 Detective Monroe?

7 THE COURT: Folks, let's take a ten
8 minute break. Remember the admonition. No
9 discussion in the meantime.

10 (Court in Recess at 2:50 p.m.)

11 (Resumed in Open Court at 3:10 p.m.)

12 THE COURT: Mr. Becker, please
13 explain what you are doing here.

14 Q. (By Mr. Becker) Detective, I'm going to hand
15 you what has been marked for purposes of
16 identification as Exhibit No. 2, and ask
17 if you recognize what Exhibit No. 2 is?

18 A. Yes, Sir. It is a video of the crime scene at
19 254 Fonderlac.

20 Q. I'm going to play for the Jury and you,
21 Exhibit No. 2, and if you could narrate
22 as we go along, what it is we're

1 watching. Detective, I believe we have
2 no sound.

3 A. Yes, Sir.

4 Q. Just narrate as we go along, what we're
5 viewing?

6 A. This is a view of the kitchen and the area
7 where Mr. Fingerhut's body was laying.
8 You can also see the car in the garage in
9 that picture, the burgundy 300-M
10 Chrysler. The wound to Mr. Fingerhut's
11 hand. Blood spatter on the wall above
12 his head. That is looking from the stair
13 well area.

14 Q. Which stair well?

15 A. The basement stair well area back farther into
16 the kitchen. The kitchen itself. This
17 is looking from the corner of the kitchen
18 to Mr. Fingerhut's body towards the rest
19 of the house. That is the hallway that
20 leads to the bedrooms and the floor
21 there, that spot, that spot right there
22 is the drop of blood that was later

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1 taken. That is looking from the garage
2 into the kitchen area. The weapon where
3 it was laying. That is showing the
4 damage to the garage door that we found
5 and the pieces of it that are on the
6 floor. The car that is parked in the
7 garage there, parts of the garage door.
8 Close-up damage there where the rail was
9 lifted away from the door. That is
10 showing the stair well and eventually the
11 close-up will be of the hole in the wall
12 where the bullet was retrieved. That is
13 looking down the hall from the hallway
14 that runs to the bedroom at the area
15 where Mr. Fingerhut's body lay and into
16 the garage. That is a view from the
17 garage back into the house and where the
18 bullet is from the doorway to where the
19 bullet is in the stair well. That is
20 after Dr. Germaniuk had begun to undress
21 Mr. Fingerhut. He's been moved by
22 Dr. Germaniuk. It shows a bullet wound.

1 The area where he had been laying and
2 blood spattering on the wall and the
3 cabinet there. The area where his body
4 was laying again. There's blood on the
5 cabinet that we were trying to show. It
6 doesn't pick it up well because of the
7 color. That is the area where the bullet
8 was retrieved at. It had been cut. That
9 is a close-up of the floor and Mr.
10 Fingerhut. That is the area outside the
11 door where there's a bloody footprint.
12 The gun had been removed already and
13 logged into evidence. It is the counter
14 top of the island area. I believe there
15 was some blood on the envelope box. That
16 is why the close-up was taken. Those are
17 the glasses on the floor after the car
18 had been moved. There's the lens from
19 the glasses as it lay after the car had
20 been moved. Damage to the door. Now the
21 door is up. It is the front of
22 Mrs. Roberts' car and the license plate

1 number. That particular -- those
2 particular things were on the inside of
3 the door, the back side of the door and
4 there was blood on those, also.

5 Q. Which door are you referring to?

6 A. The door that leads from the garage into the
7 house.

8 Q. That concludes the video tape?

9 A. Yes, Sir.

10 Q. Is that video tape, State's Exhibit 2, a fair
11 and accurate reproduction of the scene as
12 you observed it on December 12, 2001?

13 A. Yes, Sir.

14 MR. BECKER: I have no further
15 questions of this witness.

16 CROSS EXAMINATION BY MR. INGRAM:

17 Q. Good afternoon, Detective Dillon. I have a
18 couple of questions for you. I don't
19 think I'll be too long. Please try to
20 bear with me. You were not the first
21 person on the scene, am I correct?

22 A. No, Sir.

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1 Q. When you arrived on the scene, Patrolman Ray,
2 Patrolman Pollcino were already present?

3 A. Yes, Sir.

4 Q. And some emergency medical personnel are
5 present?

6 A. Yes, Sir.

7 Q. Does the name George Beck, a paramedic for the
8 Howland Fire Department sound familiar to
9 you?

10 A. Yes, Sir.

11 Q. Was he there?

12 A. Yes, Sir.

13 Q. And one of the things you do when you get
14 there is you talk to the guys that were
15 there before you to see what they have
16 done?

17 A. Yes, Sir.

18 Q. Do you learn that Patrolman Ray and paramedic
19 George Beck, at some point in time
20 entered the kitchen and roll Mr.
21 Fingerhut over, and then turn him back?

22 A. Yes, Sir.

1 Q. You arrived before Detective Monroe, am I
2 correct?

3 A. A couple of minutes, yes, Sir.

4 Q. Do you have State's Exhibits 4 and 5?

5 A. Yes.

6 Q. Have those been published?

7 MR. BECKER: Yes, they have.

8 Q. Would you hold both of those up and show them
9 to the Jury, please? Is that some kind
10 of decorated Tai dish or something like
11 that?

12 A. To me -- it seemed to me to be a serving tray
13 to put cups on to serve.

14 Q. On that serving tray is some drug
15 paraphernalia?

16 A. Yes, Sir.

17 Q. Marijuana and hemostats and tweezers?

18 A. Rolling papers. That is a cigarette rolling
19 device.

20 Q. All of this drug paraphernalia and all of this
21 marijuana. Did you guys have to search
22 to find this stuff?

1 A. No, Sir, it was in plain view.

2 Q. Where was it in plain view?

3 A. On the dining room table.

4 Q. So when a police officer walks in the dining
5 room, those drugs, that drug
6 paraphernalia, that is right there for
7 all of the world to see?

8 A. Yes, Sir.

9 Q. Was the house ransacked?

10 A. No, Sir.

11 Q. To the unfamiliar eye, did anything appear to
12 be missing from the Fingerhut residence?

13 A. No, Sir.

14 Q. Sometimes you go to a scene and it is obvious
15 that there's a T.V. that was in a place,
16 there was a VCR in a place, there's
17 drawers that are upside down. None of
18 that was here, correct?

19 A. No, Sir.

20 Q. The gun that is shown on the step in State's
21 Exhibits 9 and 10. First of all, can you
22 help me identify by make and model this

1 gun?

2 A. It is a Taurus .38 special revolver.

3 Q. Now that is not the gun that we talked about
4 when we refer to Santiago Mason, the .38
5 Smith and Wesson?

6 A. No, Sir.

7 Q. That's a different gun?

8 A. Yes, Sir.

9 Q. Was that gun submitted for fingerprint
10 analysis, do you know?

11 A. I don't know.

12 Q. Was that gun handled carefully while you were
13 on the scene to preserve the integrity of
14 any fingerprints which may have been on
15 that gun?

16 A. Yes, Sir.

17 Q. Did you at some point in time notice that
18 Donna Roberts had on a T-shirt and there
19 was some blood on her T-shirt?

20 A. What appeared to be blood, yes, Sir.

21 Q. And as a result of the fact that her T-shirt
22 contained what appeared to be blood, did

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1 you or Detective Monroe ask her to change
2 T-shirts?

3 A. Yes, Sir.

4 Q. Did you ask her to give you her T-shirt?

5 A. Yes, Sir.

6 Q. Was she cooperative in doing that?

7 A. Yes, Sir.

8 Q. Did she resist your request?

9 A. No, Sir.

10 Q. Was that shirt submitted to the laboratory for
11 scientific analysis?

12 A. Yes, Sir.

13 Q. Do you have a report back regarding that
14 shirt, do you know?

15 A. I don't know firsthand.

16 Q. If I wanted to ask that question of someone
17 who would have firsthand knowledge, would
18 that person be Chief Monroe?

19 A. Yes, Sir.

20 Q. And Donna was also asked, I believe, to submit
21 to a swab of her hands to determine
22 whether there was gunshot residue on her

1 or about her hands?

2 A. Yes, Sir.

3 Q. And did she resist that request?

4 A. No, Sir.

5 Q. Did she comply?

6 A. Yes, Sir.

7 Q. She was cooperative throughout the night,
8 wasn't she?

9 A. Yes, Sir.

10 Q. And at one point in time before she leaves
11 with Ralph and Rita Roberts, then
12 Detective Monroe, now Chief Monroe
13 basically tells her that the entire house
14 is a crime scene, and every nook and
15 cranny of the house has to be searched?

16 A. Yes, Sir.

17 Q. And she indicated that that was fine with her,
18 she just wanted you guys to do what you
19 had to do to find the person responsible?

20 A. Yes, Sir.

21 Q. Now the key that was found under Mr.
22 Fingerhut. I believe that is in Joint

1 Exhibit 1. What efforts were made to
2 determine what door or what object that
3 key was designed to open?

4 A. I don't know.

5 Q. Who would?

6 A. Chief Monroe.

7 Q. Where is that key today?

8 A. It has been entered into evidence.

9 Q. That means it is at the Howland Police
10 Department?

11 A. I don't know.

12 Q. In one of Mr. Fingerhut's wallets, and he had
13 two wallets in his back pockets, am I
14 correct?

15 A. Yes, Sir.

16 Q. In one of his wallets, he had approximately --
17 not approximately, \$231?

18 A. Yes, Sir.

19 Q. In his front pocket, he had \$130?

20 A. Yes, Sir.

21 Q. And that was not in the other wallet, that was
22 just in his pocket like I keep my money?

1 A. Yes, Sir.

2 Q. And in addition to the money, if you look at
3 Joint Exhibit 1, you see a gold chain
4 here?

5 A. Yes, Sir.

6 Q. And there was other jewelry, was there not?

7 A. Yes, Sir.

8 Q. And that is expensive jewelry, wasn't it?

9 A. Yes, Sir.

10 Q. And that jewelry remained on his person when
11 you arrived at the scene?

12 A. Yes, Sir.

13 Q. Whose idea was it to call Ralph and Rita
14 Roberts?

15 A. I don't know.

16 Q. But the idea in calling Ralph and Rita Roberts
17 is to get some family members there to
18 help with Donna and may be see if they
19 could take her to their home?

20 A. Yes, Sir.

21 Q. And while Donna was in her residence that
22 night, before she left with Ralph and

1 Rita, she was not in any respect a
2 suspect, was she?

3 A. No, Sir.

4 Q. She was free to move about the house as she
5 chose?

6 A. Yes, Sir.

7 Q. Although you asked her not to interfere with
8 what you guys were doing, it was her
9 house, and she could go where she wanted
10 and do what she wanted?

11 A. Yes, Sir.

12 Q. Can you ballpark when Ralph and Rita arrived?

13 A. For some reason, the time 1:50 a.m. sticks in
14 my mind.

15 Q. That sounds like a fair estimate. That is
16 about two hours, a little short of two
17 hours after you get there?

18 A. Yes, Sir.

19 Q. And most of the time during that two hours, am
20 I correct that Donna is in the master
21 bedroom, that is her bedroom?

22 A. Yes, Sir.

1 Q. And am I also correct that most of the time
2 she's in that bedroom, she's by herself?

3 A. Yes, Sir.

4 Q. Nobody is in there like watching what she's
5 doing, making sure she doesn't do
6 anything? She's just in there alone?

7 A. Yes, Sir. Back and forth, between the group
8 of us, we would have walked in the
9 bedroom to check on her and walk out as I
10 said I had done.

11 Q. Periodically?

12 A. Yes.

13 Q. But most of the time she was actually in there
14 alone?

15 A. Yes, Sir.

16 Q. And when Ralph and Rita arrive and Donna
17 agrees to go to their home, first off,
18 whose decision was it that Donna would
19 leave?

20 A. I can't answer that question.

21 Q. You couldn't make her leave, could you?

22 A. No.

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1 Q. When she left, she gathered belongings to
2 leave, did she not?

3 A. Yes, Sir.

4 Q. And she perhaps, with the assistance of Ralph
5 and Rita -- but she gathered her
6 belongings to take with her?

7 A. Yes, Sir.

8 Q. And again, there was no restriction put on
9 whatever belongings she wanted to take
10 with her?

11 A. No, Sir.

12 Q. Did she ask to take her car?

13 A. I don't know.

14 Q. If she had asked to take her car, could you
15 have stopped her?

16 MR. BECKER: Objection.

17 Q. Did you have the legal authority --

18 THE COURT: Objection sustained.

19 Q. Did you have the legal authority to stop her
20 from taking her car, if she wanted to
21 take it?

22 MR. BECKER: Objection.

1 THE COURT: That is a perfectly
2 legitimate question.

3 A. At that point, no.

4 Q. There was a video that was made by Deputy
5 Leshnack that was just played?

6 A. No, by myself and Chief Monroe.

7 Q. I'm sorry. You are correct. That video was
8 made by yourself and Chief Monroe. At
9 the end of the video, we see a map of the
10 United States in the last 30 seconds or
11 so; do you recall seeing that?

12 A. Yes, Sir.

13 Q. I'm going to hand you what has been marked for
14 identification purposes as Defendant's
15 Exhibits 1, 2 and 3. I would ask you to
16 take a gander at those and when you are
17 done, look up so that I know you are
18 ready.

19 A. Okay.

20 Q. Defendant's Exhibits 1, 2 and 3, do they also
21 show that map of the United States?

22 A. Yes.

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1 Q. From the garage into the kitchen, there's a
2 door -- there's a doorway, correct?

3 A. Yes, Sir.

4 Q. And that doorway has a storm door and a
5 regular door?

6 A. Yes, Sir.

7 Q. Is the regular door solid wood, do you recall?

8 A. I believe it is a wood frame and it is hollow
9 in the middle, but it is wood.

10 Q. There's no glass in there?

11 A. No, Sir.

12 Q. And the door opens inward into the kitchen?

13 A. Yes, Sir.

14 Q. So if this is the garage -- the garage, this
15 is the kitchen, this would be the door,
16 right?

17 A. Yes, Sir.

18 Q. And if I wanted to see that map, I would have
19 to close this door and the map would be
20 on the kitchen side of the door for in
21 our example, the Courtroom side of the
22 door?

1 A. Yes, Sir.

2 Q. Did I hear you say that that map had blood on
3 it?

4 A. Yes, Sir.

5 Q. Can I borrow those for a second? To the right
6 of the map, there's a calendar with two
7 dogs on it?

8 A. Yes, Sir.

9 Q. Does that map also or does that calendar have
10 blood on it?

11 A. I don't know.

12 Q. Below the calendar is something. Take a look
13 at Defendant's Exhibit 3. Are you able
14 to tell me what that is?

15 A. On it or what it is?

16 Q. First of all, what is it?

17 A. Some kind of chart.

18 Q. Do you have any recollection of seeing that
19 chart on December 11, 2001 when you were
20 in the Fingerhut residence?

21 A. No.

22 Q. Does there appear to be blood on that chart?

1 A. Yes, Sir.

2 Q. Does blood on the map -- there's blood on the
3 calendar, there's blood on the chart, am
4 I correct?

5 A. The chart and the map I can say yes -- I can't
6 see the picture well enough of the
7 calendar.

8 Q. I'm going to hand you what has been marked for
9 identification purposes as Defendant's
10 Exhibit 4. Have you seen that before?

11 A. The picture, yes.

12 Q. Is that a drawer in the -- is that a
13 photograph of the drawer inside 254
14 Fonderlac?

15 A. I can't answer that question.

16 Q. Where have you seen that photograph before?

17 A. In the photographs from the scene.

18 Q. Does that photograph -- is it a photograph of
19 a drawer?

20 A. It appears to be, yes, Sir.

21 Q. And are there, for lack of a better term, sex
22 toys in that photograph?

1 A. Yes, Sir.

2 Q. And among the sex toys depicted in that
3 photograph, is there a set of handcuffs?

4 A. Yes, Sir.

5 Q. And then there's other things, right?

6 A. Yes, Sir.

7 Q. I'll try to avoid mentioning, but there are
8 other things. Were those handcuffs
9 seized and taken by the Howland Police
10 Department as evidence?

11 A. I can't answer that question.

12 Q. Yes, you can. When you seize evidence, you do
13 an inventory and receipt, do you not?

14 A. Yes, Sir.

15 Q. You guys left Fonderlac at 6:30 in the morning
16 on December 12th. Did you leave an
17 inventory or did you create an inventory?

18 A. Yes, Sir.

19 Q. Would you take a gander at the inventory and
20 see if those handcuffs are delineated
21 anywhere in that document?

22 A. I don't see it in there.

1 Q. The inventory of the items removed on the 12th
2 are approximately six, seven pages, eight
3 pages?

4 A. Yes, Sir.

5 Q. 53 items, eight pages long?

6 A. Yes, Sir.

7 Q. No mention of handcuffs?

8 A. No, Sir.

9 Q. So, do you know if they were removed or not?

10 A. Yes, Sir.

11 Q. What is the answer?

12 A. No.

13 Q. They were not removed?

14 A. No, according to that.

15 Q. There were two photographs of suspected bloody
16 footprints?

17 A. Yes, Sir.

18 Q. One is on the step in the garage, and one you
19 said was up in the kitchen?

20 A. Yes, Sir.

21 Q. Any effort made to measure those to assist in
22 determining perhaps what size shoe might

1 have made those impressions?

2 A. I can't answer that question.

3 Q. I have a ruler here. If I had something on
4 the ground and I wanted to may be have an
5 idea of what size it was, I might just
6 put a ruler down there and take a picture
7 of it?

8 A. Yes, Sir.

9 Q. Have you seen any picture like that?

10 A. No, Sir.

11 Q. Of either of these supposed footprints?

12 A. No, Sir.

13 Q. We don't even know if they are the same size,
14 do we?

15 A. No, Sir.

16 Q. On December 13th, you went to Vista Windows to
17 talk to Santiago Mason. When you went
18 there, did you know there was a warrant
19 for his arrest?

20 A. Yes, Sir.

21 Q. When there's a warrant for someone's arrest,
22 that means that any time that person

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1 comes in contact with a law enforcement
2 officer, the law enforcement officer is
3 supposed to take that person into
4 custody?

5 A. Yes, Sir.

6 Q. And you heard a stipulation that this warrant
7 for Santiago Mason was taken out by Donna
8 Roberts on November 28th?

9 A. Yes, Sir.

10 Q. So, Mr. Mason could have been arrested on that
11 warrant November 28th?

12 A. Yes, Sir.

13 Q. November 29th?

14 A. Yes, Sir.

15 Q. December 1st?

16 A. Yes, Sir.

17 Q. December 2nd?

18 A. Yes, Sir.

19 Q. December 3rd?

20 A. Yes, Sir.

21 Q. Let's go to December 11th. If he had the
22 misfortune of running into a policeman on

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1 December 11th, his butt would be in jail,
2 correct?

3 A. Yes, Sir.

4 Q. Now, you heard Mr. Mason testify that -- I'll
5 withdraw that question. The Smith and
6 Wesson .38, that was reported stolen?

7 A. Yes, Sir.

8 Q. Where in 254 Fonderlac is that gun recovered?

9 A. Never was.

10 Q. It was never recovered?

11 A. No, Sir.

12 Q. It is not in the house?

13 A. No, Sir.

14 Q. On December 14th, you and Detective -- well,
15 what should we call him? He's not here,
16 so let's call him Detective Monroe and
17 when he comes, we'll call him Chief,
18 okay?

19 A. Yes, Sir.

20 Q. You and he go to the Youngstown terminal on
21 December 14th?

22 A. Yes, Sir.

1 Q. And that is the date that you actually take
2 possession of two of the WRTA video
3 security cassettes?

4 A. Yes, Sir.

5 Q. And so that everybody is clear on this, WRTA
6 controls that facility and their security
7 system is both for themselves and for
8 Greyhound?

9 A. Yes, Sir.

10 Q. And isn't it a fact that you asked for those
11 two video tapes as a direct result of
12 Frank Reynolds telling you that Donna
13 Roberts was kissing and hugging Nate
14 Jackson in the vestibule at approximately
15 10:45 a.m. on Tuesday, December 11th?

16 A. Yes, Sir.

17 Q. So, you told the Prosecution that you spent a
18 lot of time and I think it is about eight
19 hours?

20 A. I believe so.

21 Q. Looking at that video to see if you could find
22 Mr. Fingerhut, remember?

1 A. Yes, Sir.

2 Q. You didn't tell us anything about looking in
3 that video to see if you could find Donna
4 Roberts and Nate Jackson kissing and
5 hugging in the vestibule?

6 A. No, Sir.

7 Q. That is why you asked for the video in the
8 first place, right?

9 A. Yes, Sir.

10 Q. So you did look for that, didn't you?

11 A. Yes, Sir.

12 Q. And you didn't find it, did you?

13 A. No, Sir.

14 Q. But you didn't tell us anything about it until
15 now?

16 A. No, Sir.

17 Q. That takes us, I believe, to December 16th,
18 when you go to the Days Inn?

19 A. Yes, Sir.

20 Q. And Detective Monroe does not accompany you on
21 that date, you are met by Mr. Lulla from
22 BCI and Detective Heaver from Boardman?

1 A. Yes, Sir.

2 Q. Can I see whether it is there or there, I
3 don't know, that computer printout of
4 phone calls. I think it is 311-D. Who
5 gave you 311-D?

6 A. Rita Morrison.

7 Q. That room was rented for a week, is that
8 correct?

9 A. Yes, Sir.

10 Q. What are the dates of the telephone calls in
11 311-D?

12 A. December 12th -- or I'm sorry, December 13th
13 and December 14th of 2001.

14 Q. No other dates?

15 A. No, Sir.

16 Q. And did I hear right that 311-E is a credit
17 card receipt for those phone calls?

18 A. It appears to be.

19 Q. Could I see that? This is dated December
20 16th. Were you present when this was
21 generated?

22 A. Yes, Sir.

1 Q. Was Donna Roberts there?

2 A. No, Sir.

3 Q. Is her signature on there?

4 A. No, Sir.

5 Q. That is the same date you conducted the time
6 audit and so everybody knows what I am
7 talking about, the time audit is when you
8 and Mr. Pascarella ran a credit card
9 transaction to determine the time.

10 A. That was on the 18th.

11 Q. When you do this on the 16th, is there any
12 effort on the 16th made to determine
13 whether that time is accurate, which is
14 7:31 a.m.?

15 A. No, Sir.

16 Q. Did you get up that early?

17 A. No, Sir.

18 Q. I didn't think so. When did you do the time
19 audit?

20 A. On the 18th. December 18th of 2001.

21 Q. So you go there on December 18th. You run a
22 credit card transaction through, and you

1 run it through at 11:54 a.m.

2 A. Yes, Sir.

3 Q. And the machine, the receipt generated by the
4 machine was 12:40 p.m.?

5 A. Yes, Sir.

6 Q. So, you're right, it is 46 minutes fast,
7 right?

8 A. Yes, Sir.

9 Q. What I need to know about that, did you make
10 an effort to determine if there was a
11 standard like -- did you run that
12 transaction and then run a second
13 transaction and a third transaction to
14 see if those transactions were also 46
15 minutes fast?

16 A. No, Sir.

17 Q. Did you on any other date run a credit card
18 transaction to determine whether those
19 transactions were 46 minutes fast?

20 A. No, Sir.

21 Q. So for all you know, this particular
22 transaction that you ran on December

1 18th, was just an abhorrent mechanical
2 error on that machine on that occasion?

3 A. Technically, yes, Sir.

4 Q. Because you never ran a second or third test
5 to determine whether your results were
6 accurate or not?

7 A. No, Sir.

8 MR. INGRAM: Thank you. No further
9 questions.

10 MR. BECKER: I have nothing further
11 of this witness.

12 THE COURT: Thank you.

13 MR. BECKER: At this time, we have
14 no further witnesses for the day.

15 THE COURT: We'll begin at 9:00 in
16 the morning. You are not to discuss anything or
17 watch anything or read anything in the newspapers,
18 watch anything on T.V. The usual admonition. See
19 you back here at 9:00 in the morning. Have a good
20 evening.

21 (Jurors excused at 3:55 p.m.)

22 (In-chambers at 4:00 p.m. Defendant present.)

1 MR. INGRAM: The first Side Bar,
2 according to my recollection, merely related to
3 Detective Dillon testifying from his report. When
4 he had previously testified that his recollection
5 had been refreshed from looking at the report,
6 there was an objection at Side Bar. The
7 Prosecuting Attorney indicated that he was going to
8 move along to a different area of examination, so
9 no further proceedings were necessary, nor was a
10 ruling necessary on an objection.

11 THE COURT: That was the one thing
12 we talked about.

13 MR. BECKER: That is correct.

14 THE COURT: That you were going to
15 try to get the information you needed in through
16 another witness.

17 MR. BECKER: Yes.

18 THE COURT: What is the second
19 thing?

20 MR. INGRAM: The second thing,
21 Mr. Juhasz and I have learned that Miss Roberts had
22 a scheduled appointment with her mental health

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1 provider, who I believe is a psychiatrist, who
2 upped her medication, changed her medication and
3 also, I believe increased her dosage, and I am
4 simply -- I think Mr. Juhasz and I shared this
5 concern, that the change in medication has impacted
6 her ability to follow these proceedings and
7 reasonably assist us in these proceedings. We have
8 made an effort to call the psychiatrist, and from
9 here, I am merely going to throw the ball to
10 Mr. Juhasz and let him go from here. He's much
11 more adept at these issues than I am.

12 THE COURT: I understand.

13 MR. JUHASZ: Judge, Jerry is right,
14 our concern all day has been the change in Donna's
15 appearance and demeanor. I don't know that we're
16 certainly at a point where we wanted to say, stop
17 the trial and have any sort of competency
18 proceedings. I think the most reasonable thing to
19 do, I should interrupt myself and say I had some
20 conversations with Captain Bacon who was kind
21 enough to give me some information about the
22 procedures and how they handle matters at the jail.

1 And Gary, if I am talking out of school here,
2 please correct me, but I think that the procedure
3 is that the jail is going to administer whatever
4 medication the doctor prescribes, unless and until
5 the doctor says otherwise. So what Mr. Ingram and
6 I are going to try to do is to get in touch with
7 this doctor and ask that that medication be
8 adjusted. I understand that it is a stressful
9 situation for Donna and I can understand given her
10 mental health history, why she would think that she
11 would need some medicine, but obviously whether it
12 is for a day, an hour or the entire trial, she's
13 got to be competent to stand trial in the sense
14 that she can meaningfully participate in her
15 defense. We're not trying to delay the proceedings
16 in any fashion and hopefully we can have this
17 situation corrected by tomorrow. But we did want
18 to alert everybody that we have those concerns. I
19 don't think, if she shows up in this condition
20 tomorrow, I think that I would probably move to ask
21 that the proceedings be recessed until we can get
22 it changed.

1 THE COURT: You have left word with
2 the doctor's office?

3 MR. JUHASZ: We tried to call on the
4 last break of the afternoon and I did not get
5 through. I left word. I'll try to call again.

6 GARY BACON: John had talked to me
7 about that and I don't think -- if John or Jerry
8 was to talk to them and say we don't want her to do
9 this, they would have to hear something from the
10 doctor. On the other hand, she has the right to
11 refuse medication, which we did not discuss.

12 MR. JUHASZ: We did not.

13 GARY BACON: She has the right to
14 refuse medication if she so desires.

15 THE COURT: Does your client or does
16 she remember what dosage she was on?

17 MR. INGRAM: She was on a different
18 medication. The medication has changed, two of
19 them, and Mr. Juhasz and I are not medical doctors,
20 and I'm not going to say don't give her her
21 medicine, because low and behold if something bad
22 happens, I'm not assuming the responsibility. That

1 is why we have doctors.

2 THE COURT: If it is a different
3 medication then I think I would. If it was the
4 same medication --

5 GARY BACON: I was at the doctor's
6 appointment and it is aa different medication. He
7 changed it. It has been changed.

8 MR. BAILEY: Do you want to bring
9 the doctor in and inquire of the doctor?

10 THE COURT: I don't want to go
11 through all of that, if we can get him to address
12 the problem. If he doesn't, I may have to do that.

13 MR. BAILEY: My concern is does
14 Defense Counsel feel -- I assume this is just
15 today?

16 MR. INGRAM: Yes.

17 MR. JUHASZ: Just so it is clear for
18 appellate purposes, so we make a clear record. We
19 were not in session, as you know, on Friday the
20 16th of May, and yesterday, Monday the 19th of May.
21 This appointment was on Friday the 16th, so this is
22 the first Court day since the change in the

1 medication.

2 MR. BECKER: I want to add for the
3 record, but I think -- I think Mr. Juhasz and
4 Mr. Ingram are aware that she had the appointment
5 on Friday, but were unaware until today of the
6 change of medication.

7 MR. INGRAM: That's correct.

8 GARY BACON: There was an
9 appointment scheduled and I didn't know what John
10 and Jerry wanted to do. I called Chris and said
11 she has an appointment with Psych Care. I said,
12 "What should I do? Should I take her?" Chris told
13 me to get ahold of John and Jerry and I called John
14 and had a phone conversation with John. He said to
15 go ahead and take her. At that point, there was no
16 indication there was any medicine change.

17 MR. JUHASZ: Correct.

18 MR. BECKER: My only concern here
19 is, because I have heard the statement made that --
20 it is now the end of the day, there's no further
21 testimony. We have been here since 9:00. It is
22 now 4:00 p.m. We presented four or five

1 witnesses -- three, four witnesses, five witnesses
2 there, and I would think the statement was made
3 that she has not been of assistance today. She's
4 not been of assistance today. I don't know if you
5 are moving for a mistrial?

6 MR. INGRAM: No. We're not. What I
7 believe I said was that we had cause to believe it
8 impacted her ability to follow these proceedings.

9 MR. BAILEY: It may behoove us to
10 have some type of -- I don't want to do this all
11 over again.

12 THE COURT: I believe the only
13 witness that was really a fact witness, the only
14 problem would be some situation where Donna was
15 present, but there's a rendition of fact. The rest
16 of it, none of us need be here. Just put it on the
17 record to the Jury, but a lot of that was just the
18 presentation of evidence, which Donna had no direct
19 participation in. I would proffer this to the
20 Defense, that if you feel uncomfortable about
21 anything that happened with Mr. Dillon, Mr. Dillon
22 was there and testified to things that Donna was

1 present at, then I would reserve your right to call
2 him back or require the State to go through all of
3 that again. That is up to you folks.

4 MR. INGRAM: We're not uncomfortable
5 with the examination of Detective Dillon.

6 MR. JUHASZ: Candidly, neither of us
7 are shrinking violets when it comes to making
8 objections. If we felt it was appropriate to stop,
9 we would have asked to do so.

10 MR. BECKER: We're leaving it as you
11 are going to get ahold of the doctor or attempt to.
12 If we cannot get ahold of him by 9:00 tomorrow, do
13 we want to --

14 THE COURT: We'll address it.

15 MR. BAILEY: Do you want the Court
16 to call to have the facility page him?

17 MR. INGRAM: It may help, if you
18 call and reasonably suggest that this good doctor
19 make an effort to return our call.

20 (End of in-chamber discussion at 4:10 p.m.)
21
22

1 Wednesday, May 21, 2003; In Open Court at 9:40 a.m.:

2 (Jury is not present.)

3 THE COURT: The Court will make
4 inquiry of the status of your client.

5 MR. JUHASZ: Your Honor, I have had
6 some conversations with Donna this morning. I
7 suppose to make the record complete and also
8 apprise the Court of everything that happened.
9 Well, let me go back to after our chambers
10 conference yesterday. The Court was kind enough to
11 call Valley Counseling and try to use the influence
12 of the Court to make sure that somebody came to see
13 Miss Roberts. After that, Mr. Ingram and I went
14 over to the jail. We spoke with the jail medical
15 staff, advised her of the problem, and she
16 concurred about Donna's appearance. She indicated
17 that she would be able to talk to the jail doctor,
18 who was Dr. Malvasi, and even if Donna's doctor did
19 not modify the medicine that Dr. Malvasi would
20 probably be able to. My understanding is that they
21 have done that, and I have had some conversations
22 with Donna this morning. I won't tell you that

1 she's as alert as she normally is, but I'll tell
2 you that I believe she's much more alert than
3 yesterday, and having had some conversations with
4 her this morning about a number of items, including
5 things related to her case, Mr. Ingram and I do
6 feel that she's able to proceed.

7 THE COURT: Fine. She did have
8 contact with medical assistance?

9 MR. JUHASZ: Somebody came from
10 Valley Counseling. She does not know the name. My
11 conversation with Valley Counseling, I'm sorry,
12 after the Court called, they then called me back on
13 my cell phone. There was some original discussion
14 about having Donna conveyed there for an
15 appointment. When she called me back on the cell
16 phone, she told me that that was not going to
17 happen, because the doctor was too busy, but they
18 were going to send somebody to the jail from Valley
19 Counseling. We made the nursing staff aware that
20 they did in fact come to see Donna and her
21 medication has been modified for today.

22 MR. BAILEY: I think the Court

1 should also make inquiry of the Defendant to make
2 sure that she's able to proceed today.

3 MR. INGRAM: I'm not sure that we'll
4 permit that.

5 THE COURT: May I ask your client
6 one question? Is she comfortable with proceeding?

7 MR. INGRAM: Yes, you may.

8 THE COURT: Donna, are you
9 comfortable with proceeding today? You understand
10 what is going on, the medication is not affecting
11 you as it did yesterday?

12 THE DEFENDANT: Yes.

13 THE COURT: Connie, it has been
14 brought to my attention that there was some
15 conversation between you and one of the jurors,
16 that a juror approached you --

17 JURY COMMISSIONER: Yes, it was
18 Juror Terry Gray. One of the ones that you guys
19 gave the order for not having to go to work. When
20 she was signing in, just like a comment in passing,
21 she goes, "I cannot believe that they already
22 published in the paper that two of them didn't have

1 to go to work anymore," which I hadn't read the
2 paper. My first question to her was, "You read the
3 paper?" She goes, "No, no." I didn't want to get
4 into a whole conversation because the other jurors
5 were sitting in there, but she had made the comment
6 that she -- somebody had talked to one of the other
7 ones, I'm assuming Peggy, but I don't know, that
8 made the statement to the other person that it was
9 in the paper that they don't have to go to work.
10 Peggy is the other one that you gave the order to,
11 Margaret Kay.

12 THE COURT: There's a situation, do
13 you wish the Court to make inquiry of either or
14 both?

15 MR. BECKER: I think you better.

16 THE COURT: Send both of them up.

17 (Juror Terry Gray entered the Courtroom.)

18 THE COURT: Good morning. Let me
19 ask you a question here. We have to go through
20 this because we have to be so careful that there's
21 no taint of the Jury. You asked or made some
22 comment to Connie about a newspaper. Explain the

1 context of that.

2 TERRY GRAY: I asked Connie how it
3 got into the paper so fast, that Peggy and I had
4 come to talk to you, and I got it from Marsha.
5 Yesterday Marsha said to me that somebody had read
6 the paper and had read in the paper that she didn't
7 have to go to work anymore, while she was on the
8 Jury, and I said -- she said, "Do you know anything
9 about that?" I said, "What are you talking about?"
10 And she said her mother had read it in the paper
11 and she didn't know anything about it and the Judge
12 hasn't said anything to her that she didn't have to
13 go to work, so she was going to work.

14 THE COURT: Did you make any comment
15 to her about your situation?

16 TERRY GRAY: I just said to her that
17 Peggy and I had concerns about going to work and
18 being put in a position of having to listen and
19 talk to people.

20 THE COURT: You just explained that
21 you and Peggy's situation is --

22 TERRY GRAY: I said that is probably

1 what it was.

2 THE COURT: Fair enough. Do you
3 have any questions?

4 MR. BAILEY: No questions.

5 THE COURT: Defense?

6 MR. INGRAM: No questions, but I'll
7 tell you what I'll do. When Chris Bobbey comes in
8 this afternoon, we'll beat him up for you. The
9 answer to your question is, he's responsible for
10 that.

11 TERRY GRAY: It was after Court and
12 I just couldn't understand how it had gotten in the
13 paper so fast.

14 THE COURT: If you find out, let me
15 know.

16 MR. BAILEY: It was a slow news day.

17 MR. JUHASZ: I think I know the
18 answer to this, but the only contact you have had
19 with the newspaper is from what Marsha told you
20 from what her mother told her?

21 TERRY GRAY: I have not seen a
22 newspaper, watched the television, nothing.

1 Isolated at home.

2 (Terry Gray excused from the Courtroom.)

3 (Marsha Danadic, Juror No. 10, entered the Courtroom.)

4 THE COURT: The lady that was just
5 here had some conversation with you about something
6 in the newspaper. Explain that to us for the
7 record.

8 MARSHA DANADIC: I had asked -- my
9 mother-in-law wanted to know was I still going to
10 work. She said she read in the paper that we
11 didn't have to go to work anymore. She knows I
12 work every other weekend, so not necessarily -- you
13 guys are off the weekend, but I wouldn't be. I
14 guess she was trying to help me out.

15 THE COURT: Sounded like a good idea
16 to you?

17 MARSHA DANADIC: Yes.

18 THE COURT: You were wondering if
19 there had been some order that the Court had put
20 on?

21 MARSHA DANADIC: I told her the
22 Judge didn't say anything to us about it, so that

1 was all.

2 THE COURT: And the answer given to
3 you by the other lady that was in here, Terry Gray,
4 I think -- did that satisfy you as to what the
5 situation was?

6 MARSHA DANADIC: Yes.

7 THE COURT: You did not read a
8 newspaper yourself?

9 MARSHA DANADIC: No.

10 THE COURT: Any questions,
11 Mr. Bailey?

12 MR. BAILEY: No questions.

13 MR. INGRAM: Just a couple of
14 questions. Good morning. How are you? It was
15 your mother-in-law that spoke with you?

16 MARSHA DANADIC: Yes.

17 MR. INGRAM: Did she tell you
18 anything else about the article that she had read
19 other than the fact that there was someone who
20 didn't have to go to work anymore?

21 MARSHA DANADIC: No.

22 MR. INGRAM: That is all I wanted to

1 know.

2 THE COURT: Thank you.

3 (Juror Marsha Danadic excused from the Courtroom.)

4 (Jurors entered the Courtroom at 9:55 A.M.)

5 MR. BECKER: The State would call
6 Dale Laux.

7 DALE LAUX

8 being duly sworn according to law, on his oath,
9 testified as follows:

10 DIRECT EXAMINATION BY MR. BECKER:

11 Q. Good morning. Would you introduce yourself to
12 this Jury, please?

13 A. My name is Dale Laux, L A U X.

14 Q. And Mr. Laux, where are you employed at?

15 A. I work for the Ohio Bureau of Criminal
16 Identification and Investigation in
17 Richfield, Ohio.

18 Q. And what is it you do there?

19 A. I am a forensic biologist.

20 Q. Can you relate to this Jury what exactly a
21 forensic biologist does at BCI?

22 A. Yes. We examine evidence that is brought into

1 the laboratory from police departments
2 and Sheriff's offices in regards to
3 criminal activity. I primarily examine
4 clothing, weapons, many different types
5 of objects for stains of body fluids, for
6 example, blood, semen, saliva, things of
7 this nature.

8 Q. And can you briefly relate to this Jury the
9 education and training that you received
10 that prepared you for that position?

11 A. Yes. I have a Bachelor's of Science degree in
12 Biology from Heidelberg College. I have
13 a Master's of Science degree from Ohio
14 State University, and I have worked with
15 the Bureau for over 23 years. And during
16 that time, I have attended many schools
17 and workshops and meetings in the area of
18 forensic science. Some of these schools
19 were at Quantico, Virginia at the FBI
20 Academy. A couple of these schools
21 involved the analysis and examination of
22 blood stains and semen stains and DNA

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1 analysis. And I have also had training
2 in forensic serology from a laboratory in
3 Chicago, Illinois. The lab is run by
4 Walter McCrone.

5 Q. And you have testified, I'm assuming, many
6 times in the State of Ohio?

7 A. Yes.

8 Q. And you have been qualified as an expert
9 witness many times?

10 A. Yes.

11 Q. Can you just name a few of the counties that
12 you have been qualified as an expert in?

13 A. I believe I have testified in about half of
14 the counties. There's 88 counties in
15 Ohio, and roughly half of those, mostly
16 the northeast, southeast, and northwest
17 areas.

18 Q. And that would include Trumbull County?

19 A. Yes.

20 Q. Now, Mr. Laux, I would like to ask you some
21 questions about specific work you do.
22 First of all, there's a test called

1 presumptive blood test, is that correct?

2 A. Yes.

3 Q. And can you relate to this Jury what exactly a
4 presumptive blood test is and how you
5 perform it?

6 A. Well, there are different types of presumptive
7 blood tests that are used throughout the
8 country in examining blood stains. It
9 depends on the lab and the analyst as to
10 what they want to use, but all of them
11 have one thing in common. They will
12 react with the heme portion of
13 hemoglobin, and that is a component that
14 is in our blood. And they will, the heme
15 acts as the catalyst, which speeds up a
16 chemical reaction. And we can utilize
17 this phenomenon by adding a chemical to a
18 stain and seeing if it turns a color. It
19 acts as a catalyst and speeds up the
20 oxidation of a chemical, and it is very
21 simple process. It turns a colorless
22 liquid into a colored compound and that

1 indicates to us then that the sample may
2 be blood. It is a presumptive test,
3 because there are other things that will
4 react like that and give you a positive
5 reaction, but there aren't any substances
6 that I'm aware of that look like blood
7 and give a positive reaction.

8 Q. And do you on occasion at the lab do a
9 presumptive test even if there's been a
10 presumptive test out in the field by say
11 an agent or law enforcement officer?

12 A. Are you asking if I would repeat it?

13 Q. Yes.

14 A. Yes, I would.

15 Q. Why would you do that?

16 A. Well, just to satisfy myself that I am getting
17 a positive reaction and that whatever was
18 collected is still there and giving a
19 positive reaction.

20 Q. And let's talk specifically about when
21 materials and say may be specifically
22 clothing comes to you or articles of

1 clothing or material come to you. What
2 is it that you do when you first receive
3 an item that potentially you need to
4 examine or that you are required to
5 examine?

6 A. First thing I would do is lay out a clean
7 sheet of brown paper that we have and
8 place the item on that. For example,
9 let's say a shirt, and under very good
10 lighting, take a look at the shirt,
11 describe it in my notes, and look for any
12 apparent stains that may be blood. And
13 I'm sure everyone knows what blood stains
14 look like. When they are dry on
15 clothing, they tend to turn a little
16 browner in color than red. I'll check
17 those stains visually, and if anything
18 appears to be blood, then I'll run this
19 presumptive test. And the way we do
20 this, we don't contaminate the sample
21 with the chemical I mentioned. We'll
22 take a clean cotton tip swab, moisten it

1 and then dab the stain, and in doing
2 that, we're removing some of the stain
3 out of the swab and we don't need very
4 much. And then we'll add our chemicals
5 to the swab and see if it turns color.

6 Q. Now, how is it that you work -- I know years
7 ago, you were in, I think you were in
8 serology, is that correct?

9 A. Yes.

10 Q. For lack of a better term -- or let me strike
11 that. Over the years serology has sort
12 of fallen by the wayside; is that a fair
13 statement?

14 A. Yes.

15 Q. And serology has been replaced by what testing
16 procedure?

17 A. Well, serology is defined as the typing of
18 blood and semen stains, and years ago, we
19 used to do the ABO blood grouping method,
20 and a lot of you are familiar with what
21 your ABO blood type is, but it wasn't as
22 discriminating as other methods. For

1 example, half the population are type O,
2 so it doesn't help you very much in
3 determining who could be the source of a
4 blood stain. And then we moved into
5 protein markers and that helped
6 distinguish the potential donor of a
7 blood stain. And then now finally, I
8 think most people have heard of DNA and
9 that is a method where a stain is
10 extracted and typed and given what is
11 called a profile, and we can, if we get
12 enough markers to come up on a stain,
13 state with certainty that an item
14 originated from a person to the exclusion
15 of all other people, because the numbers
16 are so tremendously large; so that has
17 changed. The basic analysis and
18 examination of items for blood and semen
19 and the presumptive test has not changed,
20 but the actual typing of the material
21 has.

22 Q. And I assume we talked a little bit about

1 materials and examining say clothing. I
2 assume you use pretty much the same
3 procedure or can you tell this Jury what
4 the procedure is when you get say a fluid
5 sample from a known suspect and they are
6 asking you to compare that to an unknown
7 suspect or unknown material?

8 A. When we have an unknown material, a stain on a
9 pair of pants or shirt for example, and
10 now we want to determine could a person
11 be the source of that material or can
12 that person be excluded as being a source
13 of that blood. What we need is a
14 standard. And we can either obtain a
15 blood sample from a person or what we're
16 doing more often now is collecting, they
17 are called buccal swabs, which is just a
18 swabbing of the inside of the person's
19 cheek, and the cells that line the inside
20 of the mouth will come off onto the swab.
21 It is not painful. It gives us enough
22 sample to determine the person's DNA

1 profile from that and then we can compare
2 it to the unknown material.

3 Q. And can you explain to this Jury now here in
4 2003 and maybe in the last two or three
5 years, what your role is specifically as
6 it works as evidence comes in to you?
7 How do you work in this process of
8 analyzing material for DNA analysis?

9 A. Well, I still examine the clothing, the items
10 that are brought in. For example, in
11 this case an automobile was brought in,
12 so I would go into the garage and examine
13 the item for blood, semen stains, make a
14 determination if sperm is present or
15 blood, and then retain those items and
16 those are frozen and then we have several
17 people who do the DNA analysis. They
18 will go to a freezer, obtain those items
19 and then run the DNA type.

20 Q. Now, I want to direct your attention
21 specifically to sometime, I believe in
22 December of 2001 -- did you become

1 involved in a case that the Howland
2 Police Department here in Trumbull County
3 made you aware of?

4 A. Yes, Sir, I did.

5 Q. And I want to specifically direct your
6 attention to a report that you generated.
7 Did you generate a report when your work
8 was done in that case?

9 A. Yes, Sir.

10 Q. Now, we have had some testimony already about
11 when evidence comes into the BCI crime
12 lab. It is put on, I guess what we call
13 a submission sheet?

14 A. Yes.

15 Q. And you are familiar with those?

16 A. Yes.

17 Q. I want to show you what has been marked for
18 purposes of identification as State's
19 Exhibits 280 and 284. First of all, do
20 you recognize State's Exhibit 280?

21 A. Yes, Sir, I do.

22 Q. And what is State's Exhibit 280?

1 A. This is a submission sheet in regards to a
2 homicide that was submitted by Howland
3 Police Department, and in particular this
4 is a C submission. So there was an
5 original and then the way our lab
6 designates additional submissions is by a
7 letter after the original number, so we
8 would have gone through A and B and this
9 would have been the fourth submission.

10 Q. So you had a regular number, A, B and then
11 this one, C?

12 A. Yes.

13 Q. I'm going to hand you what has been marked for
14 purposes of identification as State's
15 Exhibit 284. That is a two page
16 document. Can you tell us what that is?

17 A. This is a copy of the report that I sent to
18 Howland Police Department in regards to
19 my findings.

20 Q. And is that a fair and accurate representation
21 of your report, is that correct?

22 A. Yes, Sir.

1 Q. Now, during the course of this investigation,
2 you had some items that you looked at to
3 make these determinations that you were
4 talking about, these presumptive blood
5 tests, is that correct?

6 A. Yes.

7 Q. I'm going to show you State's Exhibit 255.
8 I'm going to hand you State's Exhibit
9 255. And can you tell us what State's
10 Exhibit 255 is?

11 A. This is a manila envelope that was marked with
12 our case number 14, and it is labeled one
13 cotton swab of possible blood stain from
14 floor found in front door hallway.

15 Q. And what did you do with that when you got it
16 at the lab?

17 A. I opened the sealed envelope, pulled out the
18 swab, ran the presumptive test that I
19 mentioned with stain, and then I broke
20 the end of the swab off and retained that
21 in a manila envelope and froze that. The
22 test were positive for indicating the

1 presence of blood.

2 Q. And did that then go on to another location in
3 BCI?

4 A. The end of the cotton tip swab that I
5 retained, yes, it did.

6 Q. Where did that go to?

7 A. Brenda Gerardi, who is a DNA analyst, examined
8 that material.

9 Q. Now you also had a chance to examine some
10 other items, is that correct?

11 A. Yes.

12 Q. And can you briefly relate to this Jury the
13 other items that you examined at the lab
14 there pursuant to your report?

15 A. We had an automobile that was brought in. It
16 was designated item number 28 and that
17 was examined for any possible blood
18 stains, and I examined the outside and
19 interior of the vehicle, and found some
20 presumptive positive reactions and I
21 swabbed those areas and retained those.

22 Q. Do you recall what areas specifically you

1 swabbed?

2 A. Yes. There was a stain visible on the
3 passenger side, the exterior of the door
4 handle and under the door handle. Also
5 inside the vehicle near the console and
6 then also on the driver's side visor.

7 Q. I'm going to show you -- do you happen to
8 recall what the license number is to that
9 vehicle or the VIN number?

10 A. The license plate number was CPA 8225.

11 Q. I'm going to show you a series of photographs.
12 They have been marked as State's Exhibits
13 157, 159, 160, 162, 164, 165, 166, 168,
14 169, 170, 171, 172, 174, 178, 181, 182,
15 184 and 191. I'm going to hand you these
16 first and ask you to look at them before
17 I put them on the overhead.

18 A. Okay.

19 Q. Have you had a chance to review all of those?

20 A. Yes.

21 Q. Do you recognize those?

22 A. I recognize them.

1 Q. What are those Exhibits?

2 A. These are photographs of the vehicle that we
3 examined in the garage that I mentioned
4 the license number already, and they are
5 pictures of the exterior of the vehicle
6 and then various shots of the interior.

7 Q. Mr. Laux, I'm going to show you some of these
8 on the overhead here, and specifically,
9 you said you actually found some
10 presumptive test on those?

11 A. Yes.

12 Q. What were the locations again?

13 A. The outside door handle underneath. There was
14 a stain on the outside passenger door
15 handle and then underneath that handle.

16 Q. Before you begin, I'm going to show you
17 State's Exhibit 169 and ask you if you
18 recognize State's Exhibit 169?

19 A. Yes.

20 Q. What is State's Exhibit 169?

21 A. The door handle on the passenger side of the
22 vehicle.

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1 Q. And I'll show you State's Exhibit 170. Do you
2 recognize 170?

3 A. Yes. It is the door handle again.

4 Q. You have in front of you a laser pointer. It
5 looks like a little remote control.

6 A. There's a stain right there on the handle.

7 Q. And that is something that you would have
8 tested?

9 A. Yes.

10 Q. And you indicated you had found blood
11 somewhere else on that vehicle?

12 A. There was a stain inside the passenger door
13 handle that was swabbed and the item was
14 retained. It is a plastic vinyl inside
15 handle.

16 Q. I'm going to show you State's Exhibit 182.
17 Can you see number 182?

18 A. Yes. There was a stain, you can't see it, but
19 it was on this handle.

20 Q. Now there were other stains in that vehicle,
21 is that correct?

22 A. Yes, there was one labeled seven that I

1 labeled, item number seven, and that was
2 on a front panel below the light switch.

3 Q. I'm going to show you State's Exhibit 191.

4 A. There's a stained area right there I circled
5 with a yellow marker.

6 Q. This stain, was it tested?

7 A. Yes.

8 Q. Was every stain that you thought was blood on
9 this vehicle tested?

10 A. Yes.

11 Q. Now, I'm going to show you State's Exhibit
12 162. Is that the vehicle?

13 A. Yes, Sir.

14 Q. And depicting the license plate you previously
15 read?

16 A. Yes.

17 Q. Where is this garage or location at?

18 A. This garage is attached to our lab.

19 Q. And where is that physically located?

20 A. Richfield, Ohio.

21 Q. I'm going to show you State's Exhibit 164 and
22 ask if you recognize what State's Exhibit

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1 164 is? I'll show you State's Exhibits
2 164, 165, 168 and 171 before I put them
3 up on the screen. Do you recognize those
4 items?

5 A. Yes.

6 Q. I'm going to put up first of all number 164.
7 This is State's Exhibit 164. Can you
8 tell us what we're looking at?

9 A. It is the driver's side sun visor and it is in
10 the up position, and there are some
11 buttons here, that there's a button
12 labeled "off" and I believe "on" and that
13 would be the roof area. And then there's
14 a hangar mechanism that is attached to
15 the car and the visor is right here. You
16 can see the warning label on it.

17 Q. And those items were tested for presence of
18 blood?

19 A. Yes. The visor was, you see some stains here
20 and then also the mechanism that held the
21 visor onto the car.

22 Q. What were the results of that?

1 A. Positive.

2 Q. I am going to show you State's Exhibit 165 and
3 ask you what 165 is?

4 A. That is a different view of the same size.

5 Here you can see the controls that are on
6 the roof of the car. This is the roof or
7 headliner and this is the visor right
8 here that is pulled away from the
9 mechanism that holds it on. You can see
10 that attached right there.

11 Q. And what was done with the visor and that
12 mechanism, that clip?

13 A. Those were removed from the car.

14 Q. And you were present when they were removed?

15 A. Yes.

16 Q. I'll show you State's Exhibit 168 and ask if
17 you recognize State's Exhibit 168?

18 A. Yes, Sir. That is the visor that has been
19 removed now and it is laying on top of a
20 desk.

21 Q. And State's Exhibit 171?

22 A. That is a mechanism that holds the visor in

1 place, and you can see a stained area
2 right there.

3 Q. Those items that were removed, were they given
4 to someone else after you were done with
5 them?

6 A. Yes.

7 Q. Who were they given to?

8 A. Brenda Gerardi.

9 Q. I'll hand you State's Exhibits 268 and 267.
10 I'm going to ask you if you recognize
11 those items?

12 A. Yes, I recognize State's Exhibit 267. It is
13 the package that we used to hold the
14 visor that was removed. It has our case
15 number and this is a small paper bag.
16 Again it has our case number and item
17 number and this contains the mechanism
18 that held the visor in place.

19 Q. Now, I am also going to present to you State's
20 Exhibits 385, 386, 387, 388, 389, and
21 390. I'll ask if you recognize what
22 those items are?

1 A. Yes, Sir, I recognize these items.

2 Q. Can you tell this Jury and refer to please,
3 our Exhibit numbers, what those items
4 are?

5 A. State's Exhibit 385 is a swabbing from the
6 visor, the driver's side visor that you
7 saw on the screen. I took a swabbing of
8 the stained area and retained that.
9 State's Exhibit 386 is a stain, it is a
10 swabbing of a stain that was visible on
11 the trunk release that is inside the
12 vehicle on the driver's side. State's
13 Exhibit 387 is a swab with a stain and
14 that was collected from our number 14
15 and we discussed that earlier. Counsel
16 showed me an envelope that was labeled
17 item 14 and I told you that I retained
18 the cotton swab portion that was
19 exhibited and this is that. State's
20 Exhibit 388 is a blood standard from
21 Robert Fingerhut.

22 Q. Did you do anything with that?

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1 A. It came in a liquid state and I dried the
2 sample down and then retained it item
3 389, a brown paper packaging that I
4 prepared. It contains gauze that was
5 found, I believe, in a dumpster.

6 Q. That is 390?

7 A. That is State's Exhibit 389.

8 Q. You're right.

9 A. And State's Exhibit 390 is a swabbing from the
10 jacket, our item number eight.

11 Q. You actually saw a jacket at your lab at some
12 point?

13 A. This is an item that Brenda Gerardi collected.

14 Q. Okay. That is 390 from the jacket. All of
15 those items with the exception of 390,
16 they were then later turned over to
17 Brenda Gerardi?

18 A. Yes.

19 Q. For her further testing?

20 A. Yes.

21 Q. Is that the extent of your involvement in this
22 case in terms of the presumptive test for

1 finding blood on those items?

2 A. Yes.

3 Q. Now Mr. Laux, I have a few additional
4 questions for you. All of those items
5 are in the same or substantially the same
6 condition as when you examined them?

7 A. Yes.

8 Q. Your report is a fair and accurate report of
9 your findings in this case?

10 A. Yes, Sir.

11 Q. Now, I have a question for you, a couple of
12 questions I want to follow up. How many
13 cases a year do you handle in your
14 department, approximately?

15 A. I would say probably 12 hundred to 15 hundred.

16 Q. And how long or how much work is involved to
17 say do what you did in this case, can you
18 give us an approximation of how many
19 hours you spend?

20 A. I believe examination of the car took an
21 entire day and then some of the other
22 items that were submitted, so a day and a

1 half perhaps.

2 Q. And is it possible for BCI to examine every
3 piece of evidence that is given to it by
4 a law enforcement agency?

5 A. Well --

6 Q. That is a bad question. Let me rephrase that.
7 Does BCI have a policy for examining
8 certain items?

9 A. Yes.

10 Q. Tell this Jury what that policy is in terms of
11 evaluating items that are submitted to it
12 by law enforcement agencies?

13 A. We do exactly what you just stated. We
14 evaluate the items. We discuss what
15 happened in a case, what police and
16 Prosecutors believe happened, and then
17 we'll examine items that they would like
18 examined and that we agree to that will
19 either help substantiate what they
20 believed happened or refute that
21 situation. And then those officers can
22 go on other leads, but primarily, we want

1 to examine items that we think are
2 relevant and will shed light on what
3 happened.

4 Q. So, if an agency would bring in to you 300
5 items and ask you to examine all of them,
6 what would the response from BCI be to
7 that?

8 A. We would not do that. We would talk to the
9 authorities and say, "Please can you tell
10 us some items that you would like us to
11 look at, and if it turns out that this
12 aids you, perhaps we can stop," and
13 certainly -- I'm working on one case that
14 is years and years old and so far nothing
15 has been fruitful, so we'll continue to
16 work on a case until we can gather some
17 information that, as I said, sheds light
18 on perhaps what happened.

19 Q. And in essence then what you ask the agencies
20 are to give you the best of what they
21 need?

22 A. Yes. You have to understand that when an

1 officer is at the crime scene, they are
2 perhaps collecting items that they think
3 may be relevant, they are not sure, and I
4 have been in that situation myself. So
5 you are going to collect a lot of items
6 and now, because you have one time to do
7 that, and then later, you go through
8 those items and ask yourself, is this
9 helpful or is this relevant or do I not
10 have to look at this item.

11 Q. And even though some things may add to the
12 case, there's a time constraint that you
13 have at your agency?

14 A. Yes. We're under time constraints certainly.
15 We have cases that are going to Court.
16 We try to at all times meet Court dates,
17 so that is a priority, and everyone wants
18 their case done immediately, so we do
19 have a time problem in that regard.

20 Q. Mr. Laux, I want to thank you very much for
21 your time. Just so counsel knows, I'm
22 going to keep all of these somewhat

1 organized in the back on the bench here,
2 if you want any of these Exhibits other
3 than his report. Thank you very much,
4 Mr. Laux.

5 CROSS EXAMINATION BY MR. JUHASZ:

6 Q. Mr. Laux, good morning.

7 A. Good morning.

8 Q. I just have a few questions for you and let me
9 start with a couple of things that
10 Mr. Becker gave you. One of the things
11 he gave you was the C submission sheet;
12 do you have that in front of you?

13 A. Yes, Sir.

14 Q. Would you be kind enough again, for the
15 record, to identify what State's Exhibit
16 that is?

17 A. State's Exhibit 280.

18 Q. Now, 280, State's Exhibit 280 is the C
19 submission, which I think you said is the
20 fourth submission, correct?

21 A. Yes.

22 Q. Now you also have in front of you, your

1 report, correct?

2 A. Yes, Sir.

3 Q. Would you take just a second and look at that
4 and then tell me after you have looked at
5 it, whether you were asked to analyze
6 anything on the C submission?

7 A. Yes, I don't have to look on the report. I
8 can see on the C submission that I was
9 asked to look at items. It is written
10 right on the State's Exhibit 280.

11 Q. Let me ask you to take a look at your report
12 and again, would you be kind enough for
13 the record to identify what that is, as a
14 State's Exhibit, what number?

15 A. State's Exhibit 284.

16 Q. On the first page of that report, I see some
17 items that were submitted, beginning with
18 two and ending with 28?

19 A. Yes.

20 Q. Those would be just for the clarification for
21 the Jury, those would be because there's
22 no letter in front of them or after them

1 from the original submission, correct?

2 A. Correct.

3 Q. And then at the bottom of the page, I see some
4 things actually running over into the
5 next page, starting with A-1 and ending
6 with A-25, correct?

7 A. Correct.

8 Q. So those would be from the A submission,
9 correct?

10 A. Yes.

11 Q. Now I don't see anything with any C numbers on
12 there. Does your report mention anything
13 that you analyzed from the C submission?

14 A. No.

15 Q. So, to go back to my original question, you
16 may have been asked to do that, but you
17 did not analyze anything from the C
18 submission, correct?

19 A. Correct.

20 Q. Now, can you and I agree that item C-6 on the
21 C submission is a pair of red and black
22 Nike tennis shoes?

1 A. Yes.

2 Q. Now you don't know where those shoes came from
3 or who they belonged to or anything like
4 that, correct?

5 A. Correct.

6 Q. All you know is that a pair of red and black
7 Nike tennis shoes were delivered to BCI?

8 A. Yes.

9 Q. On the C submission?

10 A. Correct.

11 Q. And you never examined them for a presumptive
12 blood test or anything else, we can agree
13 on that?

14 A. That is correct.

15 Q. Now, Mr. Becker asked you some questions about
16 the time constraints and the fact that
17 there are Court dates and all of those
18 kinds of things?

19 A. Yes.

20 Q. Here we're sitting May of 2003 in Court,
21 correct?

22 A. Yes.

1 Q. These items were submitted back in December of
2 2001, is that right?

3 A. Yes.

4 Q. Now, since December of 2001, has anybody
5 called you and said, "You know, I know
6 you were kind of busy when we sent you
7 all of this stuff originally, but there's
8 a couple of other things we would like
9 you to look at." You haven't gotten a
10 call like that, have you?

11 A. No.

12 Q. Or a letter or anything like that?

13 A. No.

14 Q. I don't believe you have the original
15 submission sheet in front of you, do you?
16 You know what I am talking about, the
17 original BCI, the original submission, do
18 you have that?

19 A. Yes, I have a copy in my file.

20 Q. Rather than marking another Exhibit, let's
21 just use that one. Let's use that one,
22 fair enough?

1 A. Yes.

2 Q. Can you look on there, please, and tell me,
3 item No. 2, that was submitted with the
4 original submission, is a shirt, is it
5 not?

6 A. Yes.

7 Q. Does it indicate or do you have any knowledge
8 of where that shirt came from or who it
9 belonged to?

10 A. Yes. From Mr. Fingerhut's wife.

11 Q. Now, Mr. Laux, do you have any present
12 recollection about ever looking at that
13 shirt?

14 A. No, I did not.

15 Q. You did not?

16 A. Right.

17 Q. Did you have any discussion with the law
18 enforcement authorities about whether you
19 should look at that shirt?

20 A. I can't recall having a discussion. I may
21 have.

22 Q. And again, for the Jury, would you be kind

1 enough to tell us what date that shirt
2 was submitted to BCI?

3 A. On December 14, 2001.

4 Q. And as of today, May 21, 2003, it has not been
5 looked at or tested, we can agree on
6 that?

7 A. Yes.

8 Q. In the BCI submission sheet, sometimes they
9 ask you by putting after it or in
10 parentheses what they want you to look at
11 for a particular item, correct?

12 A. Yes.

13 Q. And just I know that you and I know what we're
14 talking about, so we're clear for the
15 Jury, if it says item one, a box, it may
16 say after it, latent prints, correct?

17 A. Correct.

18 Q. May even say firearms if they want to see if
19 there's gun powder residue?

20 A. Yes.

21 Q. Or it may say serology, they want you to check
22 and see if there's also a blood stain on

1 that box?

2 A. Yes.

3 Q. Is there any such listing for the item we have
4 listed, the shirt?

5 A. Serology, human blood.

6 Q. So when Howland Police Department gave that
7 shirt to BCI, they wanted BCI to look at
8 it, to check it for the presence of human
9 blood, correct?

10 A. Yes.

11 MR. JUHASZ: That is all I have.

12 Thank you very much.

13 MR. BECKER: No redirect.

14 THE COURT: Let's take a ten minute
15 break. Remember the admonition given.

16 (Court in recess at 10:40 a.m.)

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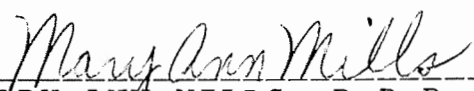
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REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.



MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio

5751

1 IN THE COURT OF COMMON PLEAS
2 TRUMBULL COUNTY, OHIO
3 TRIAL COURT CASE NO. 01-CR-793
4 SUPREME COURT OF OHIO CASE NO. 03-1441

4 STATE OF OHIO)
5)
6)
7 Plaintiff)
8)
9 - vs -)
10)
11 DONNA M. ROBERTS)
12)
13 Defendant)
14)
15)
16)
17)
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20)
21)
22)

9 BE IT REMEMBERED, that on Wednesday, May 21,
10 2003, and Thursday, May 22, 2003, these proceedings
11 came on to be heard before one of the Judges of this
12 Court, John M. Stuard, in Courtroom No. 2, on High
13 Street, Warren, Ohio, before the case heretofore
14 filed herein.

15
16
17
18 Mary Ann Mills, RPR
19 Official Court Reporter
20 Trumbull County, Ohio
21
22

A P P E A R A N C E S

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I N D E X

VOLUME XXVII:

(Wednesday, May 21, 2003 & Thursday, May 22,
2003)

STATE'S WITNESSES: (May 21, 2003)

Brenda Gerardi

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Cross Examination by Mr. Juhasz 5776

Michael Roberts

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Cynthia Mayle

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Chief Paul Monroe

Direct Examination by Mr. Becker 5856

(Thursday, May 22, 2003)

Continuing Direct Examination by Mr.

Becker of Chief Paul Monroe 5951

Cross Examination by Mr. Ingram 5960

Redirect Examination by Mr. Becker 6042

Recross Examination by Mr. Ingram 6050

1

2 Wednesday, May 21, 2003:

3 (Resumed in Open Court at 10:55 a.m.)

4

BRENDA GERARDI

5 being duly sworn according to law, on her oath,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. BECKER:

8 Q. Would you introduce yourself to this Jury?

9 A. Brenda Gerardi, G E R A R D I.

10 Q. Where are you employed at?

11 A. I am employed with the Ohio Bureau of Criminal
12 Identification and Investigation,
13 commonly referred to as BCI.

14 Q. And what do you do at BCI?

15 A. Forensic scientist in the serology, DNA
16 section.

17 Q. And how long have you been employed at BCI?

18 A. March of 1997.

19 Q. And can you tell this Jury what your primary
20 duties are at BCI?

21 A. I analyze physical evidence for the
22 identification of physiological fluids

1 such as blood, urine, feces, semen, urine
2 and saliva, and the subsequent DNA
3 analysis of those samples.

4 Q. Can you tell this Jury what education you
5 received to prepare you for that
6 position?

7 A. I have an Associate of Science degree and a
8 Bachelor's of Science degree in biology
9 from Kent State University. I have
10 completed continuing education in
11 myecular biology, genetics and
12 bio-chemistry. I have completed an
13 in-house training, approximately two
14 years of training, in DNA analysis and
15 interpretation. I have also completed a
16 course conducted by the FBI Academy in
17 Quantico, Virginia on DNA analysis and
18 interpretation.

19 Q. Do you make DNA analysis part of your duties,
20 that is a part of your duties at BCI?

21 A. Yes.

22 Q. Can you tell this Jury approximately how many

1 DNA analyses you have performed?

2 A. I have worked over 120 cases in DNA. So I
3 have made several comparisons for each
4 case.

5 Q. Now are either you or the BCI lab that you
6 work for, are they members of a
7 professional organization?

8 A. I am a member of the Midwestern Association of
9 Forensic Scientists, and I am also a
10 member of the Ohio Identification
11 Officers Association.

12 Q. And do you know whether the BCI lab here in
13 Ohio where you work at is accredited or
14 has any certifications?

15 A. We're accredited by ASCLD, which is the
16 American Society of Crime Lab Directors.

17 Q. And what does that mean to be accredited?

18 A. Accreditation is the crime lab directors have
19 come up with manuals, set standards that
20 you must follow, to insure the
21 reliability in your testing.

22 Q. Have you previously been qualified as an

1 expert witness in any Courts in Ohio?

2 A. Yes, I have.

3 Q. And that would include Trumbull County Court?

4 A. Yes.

5 Q. And I think presumably this Courtroom itself?

6 A. That is correct.

7 Q. Now, can you tell this Jury what exactly DNA
8 is?

9 A. DNA stands for deoxyribonucleic acid. It's a
10 long string like molecule that contains
11 the genetic code or blueprint for life.
12 It is found in all living cells, with the
13 exception of red blood cells, and it is
14 unique to each individual. Except
15 identical twins.

16 Q. And what makes -- and maybe just briefly,
17 could you explain why identical twins,
18 you cannot differentiate?

19 A. Identical twins, identical, the DNA will be
20 the same. During conception, the egg
21 splits and the same exact DNA type is
22 transferred.

1 Q. Now, what makes DNA useful for comparison?

2 How are we able to make these
3 comparisons?

4 A. DNA is useful -- well, 99 percent of your DNA
5 is the same from the person to person.
6 But there's the one percent of your DNA
7 that is unique and that makes you
8 different and we can tell you apart, just
9 by that area. So we do look at target
10 location in that one percent that is
11 unique to each individual. It is also
12 unique for forensic because the same DNA
13 in your skin cells, is the same DNA found
14 say in your blood cells. So you can
15 compare one to the other. So, if you
16 have left a cigarette butt at a crime
17 scene, I can compare the cells or from
18 the lip cells to a blood standard, known
19 reference standard to include or exclude
20 someone as being the source of the DNA on
21 the cigarette butt.

22 Q. And you mentioned forensic that DNA is used

1 for, but there are other uses outside of
2 forensic that DNA is used for?

3 A. DNA can be used for medical technology,
4 genetic engineering, things like that.

5 Q. Can you explain to this Jury, how you make a
6 DNA comparison? What do you do when you
7 make a DNA comparison?

8 A. There's a four step procedure that we follow,
9 and I'll break it down into those four
10 areas. First we do an extraction, which
11 is just the removal of the DNA from the
12 cellular material or stain. And then I
13 would quantify, which just allows me to
14 know how much DNA I have extracted from
15 the stain. We have an amplification step
16 which is a chemical Xeroxing of the
17 target area that I explained, area --
18 that those rare sites of DNA, and then we
19 have the actual DNA analysis, which gives
20 me the data that I can use to do the
21 comparisons from the known, to the
22 forensic sample.

1 Q. Now, how do you know that the results, what
2 you get, are going to be valid results or
3 they are reliable?

4 A. I can tell that our results are reliable
5 because we do controls through every step
6 of our procedure to ensure that our tests
7 are working properly. To ensure that our
8 tests are working properly and also, we
9 have a technical review, once my case is
10 finished, another peer or another DNA
11 qualified analyst will review all of my
12 work and then make sure that they have
13 come to the same conclusions that I have
14 come to. It is also administratively
15 reviewed by a supervisor. We also take
16 qualifying exams and proficiency tests
17 twice a year, and are graded by an
18 outside agency to ensure that I am doing
19 my tests properly and interpreting
20 reliably.

21 Q. And is that also part of that certification
22 process you talked about?

1 A. Yes, that is correct.

2 Q. Now, over the years, I think there's been
3 different types of DNA analysis used,
4 different procedures, I guess. What type
5 of DNA analysis is currently being used
6 by BCI?

7 A. We have an STR PCR procedure. STR stands for
8 short tandem repeat and that is the most
9 advanced DNA we're trained in. The PCR
10 is just the type of amplification step that
11 I told you earlier. That is the
12 procedure that we use.

13 Q. Now, sometimes during a DNA analysis, you will
14 find what we call two contributors to a
15 stain. How are you able to sort through
16 and find out that there's two different
17 contributors, that same process?

18 A. During our comparison -- well, let me explain.
19 When you -- when you are conceived, you
20 get your DNA half from your parents, so
21 one-half from your mother and half from
22 your father. So at a particular

1 location, you have two pieces. Those two
2 pieces you have two at each location, so
3 if I have four pieces at a location, then
4 I can be assured that I have a mixture,
5 and that is how I can tell whether or not
6 there's a mixture. There's also
7 mathematical formulations that we use to
8 determine percentages on how much DNA
9 from a major contributor versus the minor
10 contributor. I can also separate the
11 two, and in most cases, you aren't going
12 to have an equal proportion of the two
13 contributors. For example, if you have
14 skin cells that don't have a lot of DNA
15 and are sporadic on a clothing item, it
16 is not going to give a lot of DNA
17 reaction as much as a blood stain, that
18 you are going to have a lot of DNA
19 concentrated. If I have a stain that I
20 cut out and there's a mixture, the blood
21 is more than likely the major
22 contributor.

1 Q. And the skin would be a minor contributor?

2 A. That is correct.

3 Q. Now, when you make your analysis, you talk
4 about the location or what we call loci?

5 A. Yes.

6 Q. Just briefly explain what that is?

7 A. When we talk about a location, that is just a
8 location on the gene and I described that
9 there's a ton of information, a lot of
10 genetic material. And we're looking at a
11 very small minute portion of the
12 chromosomes and chromosomes are just part
13 of a term that houses the DNA. And so
14 when we have the location, we're just
15 pointing it out specific. We have 13
16 locations that we look at on the DNA
17 strand.

18 Q. And you look at those same 13 locations on all
19 of the DNA that you get?

20 A. That is correct.

21 Q. So, if there's 50 people that you are looking
22 at, you are looking at the same location,

1 the same 13 locations on all 50 of those
2 people?

3 A. That is correct.

4 Q. Now, you mentioned something about statistics.
5 Are you familiar with population
6 frequencies?

7 A. Generally, in forensics.

8 Q. And how they apply to your line of work?

9 A. That's correct.

10 Q. And you have been trained in how to apply
11 those statistics to your line of work?

12 A. That is correct.

13 Q. You have attended seminars and been trained in
14 that?

15 A. Yes.

16 Q. Now, I want you to tell this Jury, and direct
17 your attention to a case that was
18 involving a Robert Fingerhut and Nate
19 Jackson. Do you recall doing some
20 analysis in that case a little over a
21 year ago?

22 A. Yes.

1 Q. Now, you are familiar with that case, and I'm
2 going to present to you some Exhibits
3 that I have back here. The first thing I
4 want to present to you are State's
5 Exhibits 286-A, C and D. At the
6 conclusion of your examination, did you
7 prepare some reports?

8 A. Yes, I did.

9 Q. I'm going to hand you State's Exhibits 286-A,
10 C and D and ask if you recognize those
11 Exhibits?

12 A. Yes, I can recognize all three Exhibits by my
13 signature.

14 Q. And those are fair and accurate copies of the
15 original that I believe you have retained
16 somewhere?

17 A. That is correct.

18 Q. Now, when you were assigned to this case, I
19 believe you made some comparisons. I'm
20 going to hand you what has been marked
21 for purposes of identification as State's
22 Exhibits 265 and ask if you recognize

5 7 6 5

1 what State's Exhibit 265 is?

2 A. State's Exhibit 265, I can recognize this by
3 our BCI case number.

4 Q. And what exactly is that?

5 A. This is the blood standard of Robert
6 Fingerhut.

7 Q. And that is 265, correct?

8 A. That is correct.

9 Q. Now, you were also given some other items,
10 which I believe you have up there.
11 Specifically they are State's Exhibit
12 385, 386, 387, 388, 389, 390. Those
13 items that are there in front of you, do
14 those items also represent items that you
15 analyzed?

16 | A. Yes.

17 Q. So those were samples, and I guess just tell
18 us what those items are if you just
19 relate each one, what it is and what you
20 know it to be?

21 A. State's Exhibit 385 is a stain from the visor
22 inside the car. State's Exhibit 386 is a

1 stain above the trunk release inside the
2 car. State's Exhibit 387 is a swab with
3 stain. State's Exhibit 388 is the blood
4 standard of Robert Fingerhut. State's
5 Exhibit 389 is the gauze, and State's
6 Exhibit 390 is a stain from the jacket.

7 Q. Now, in addition, on your report, I believe
8 you also had a DNA sample. I guess we
9 call it buccal swab of Nate Jackson, is
10 that correct?

11 A. That is correct.

12 Q. You made some comparisons between a number of
13 items that were submitted to you, and
14 they would have been swabbings that
15 either an officer in the field had taken
16 or Dale Laux had taken?

17 A. That is correct.

18 Q. And they were presented to you with two, what
19 we call known standards, is that correct;
20 or two people who knew that DNA was
21 present?

22 A. I had received two known standards.

1 Q. And the one standard was from Nate Jackson and
2 the other was from Robert Fingerhut?

3 A. That is correct.

4 Q. Can you please tell us from your report, what
5 items contained DNA evidence of Nate
6 Jackson and what items contained evidence
7 of Robert Fingerhut based on your report?

8 A. I have three reports, but I'll give you the
9 information.

10 Q. Refer to the number.

11 A. State's Exhibit 286-A. The swab from the
12 house, the crime scene, would be
13 consistent with Robert Fingerhut. The
14 cutting from the visor was a mixture
15 of -- which is consistent with Robert
16 Fingerhut and Nate Jackson.

17 Q. Was there a major or minor contributor to
18 either one of those?

19 A. Not on the visor. It was a mixture. On the
20 gauze from -- I believe it was submitted
21 to me as found behind the dumpster, was
22 consistent with Nate Jackson. A cutting

1 from the jacket was consistent with
2 Robert Fingerhut. And the swab from the
3 trunk release of the car was a mixture of
4 Nate Jack -- I'm sorry, Nate Jackson and
5 Robert Fingerhut, which I did separate
6 into major and minor. The major was Nate
7 Jackson. The minor was Robert Fingerhut.

8 Q. And can you, when you give -- and that is
9 State's Exhibit 286, correct? 286-A that
10 you were reading from?

11 A. I read from all three.

12 Q. You were able to determine using those
13 population frequencies, those don't
14 actually tell us that the person that you
15 have is, I guess the person who was to
16 leave the DNA, it tells us that you can
17 exclude that person; is that a correct
18 statement?

19 A. Whether we can include or exclude. The
20 statistics gives power to an inclusion or
21 actually the inclusion.

22 Q. And what were the numbers relating to those

1 findings, the probabilities?

2 A. For the gauze -- would you like it in all
3 three populations?

4 Q. Yes. Well, no. With the gauze, with the
5 African-American population?

6 A. I'm going to read from the report. Based on a
7 national data base provided by the
8 Federal Bureau of Investigation, the
9 approximate frequencies of occurrence of
10 the DNA profile identified on the gauze,
11 are as follows. In the Caucasian
12 population, you would expect to find a
13 profile that was found on the gauze one
14 in 45 quintillion 170 quadrillion people.
15 In the African-American population, you
16 would expect to find this profile one in
17 29 quadrillion, 860 trillion people.
18 Again, in the Hispanic population, you
19 would expect to find the profile found on
20 the gauze, one in 22 quintillion, 400
21 quadrillion.

22 Q. And that was State's Exhibit 389, was the

1 gauze. Now the other items, the other
2 areas -- go ahead and give all three
3 populations.

4 A. On the visor, again I'll read from my report.
5 Based on national data base provided by
6 the Federal Bureau of Investigation,
7 proportion of the population, which
8 cannot be excluded as contributors to the
9 mixture of the DNA profiles on the visor
10 are as follows. In the Caucasian
11 population, you would expect someone that
12 would contribute to that mixture one in
13 16 million, 10,000. In the
14 African-American population, you would
15 expect to find someone to contribute to
16 the mixture one in five million, 491
17 thousand. In the Hispanic population,
18 one in six million, 835 thousand.

19 Q. And that was, the visor was previously marked
20 as State's Exhibit 385?

21 A. Yes.

22 Q. Go ahead. I know it is a little difficult

1 because your numbers don't match up to
2 our Exhibit numbers.

3 A. State's Exhibit 386 would be the trunk
4 release. Based on national data base
5 provided by the Federal Bureau of
6 Investigation, the approximate
7 frequencies of occurrence of the major
8 DNA profile from the stain above the
9 trunk release in the car are as follows.
10 In the Caucasian population, you would
11 expect to find the major contributor, one
12 in 45 quintillion, 170 quadrillion
13 people. In the African-American
14 population, you would expect to find that
15 profile one in 29 quadrillion, 860
16 trillion people. In the Hispanic
17 population, one in 22 quintillion, 400
18 quadrillion people.

19 Q. And we're referring to the major contributor
20 there as which standard?

21 A. Nate Jackson.

22 Q. And did you do statistics for the trunk

1 release relating to the minor
2 contributor?

3 A. No, I did not.

4 Q. The next one would have been -- well, what is
5 in your report?

6 A. I believe that is all.

7 Q. Now, how do you determine at BCI what items to
8 test?

9 A. Generally, as items are submitted, we do get a
10 lot of items in and we narrow it down to
11 what we believe by looking at the
12 synopsis and our forensic background,
13 what would be the best evidence, and we
14 do have a policy that allows us to do so.
15 I also contacted the department and get
16 their ideas, so I may not miss something
17 that is very important to the case. I
18 also contact, if necessary, the
19 Prosecuting Attorney to find out what is
20 necessary, maybe did I overlook
21 something, and also, they can contact me
22 directly.

1 Q. And sometimes based on your policy of the
2 things that don't get tested, there are
3 things that don't get tested?

4 A. Yes.

5 Q. And the factors that you have determined, you
6 speak to the police, the Prosecution?

7 A. Yes.

8 Q. And you make a determination yourself, but is
9 it fair to say that sometimes items don't
10 get tested that may be the police or
11 Prosecution want tested?

12 A. A lot of times that happens. A lot of
13 evidence is submitted and we do narrow it
14 down.

15 Q. And you have to do that for what purpose?

16 A. Well, we have a five month backlog, even with
17 doing it the way we do it. So, there's a
18 lot of reasons involved. A lot of times
19 it is unnecessary evidence that was
20 submitted that is not going to be needed,
21 so there's a lot of reasons involved,
22 time.

1 Q. And can you tell this Jury how long from the
2 time you get a case to the time you are,
3 your report is completed, it takes to go
4 through this process?

5 A. Well, the way it is set up, is that I wouldn't
6 just run one sample or even just one
7 case. I can run 48 samples at a time, so
8 I would have other cases, also. But the
9 general time frame is around two weeks,
10 start to finish. For me to get my
11 samples prepared, the extraction, the
12 quantification, amplification and DNA
13 analysis, and also that gives me time for
14 the interpretation, writing the report,
15 and those peer reviews that I had
16 mentioned also. It takes some time.

17 Q. And that is the reason for the policy?

18 A. Yes.

19 Q. Or one of the reasons?

20 A. Yes.

21 Q. Now you have talked about these population
22 frequencies and the statistics you gave.

1 Do you have an idea of approximately how
2 many people live on planet earth today?

3 MR. JUHASZ: Objection.

4 THE COURT: What is your objection
5 based on?

6 MR. JUHASZ: Where would she get
7 that knowledge except from hearsay?

8 MR. BECKER: Part of her training.

9 THE COURT: That is an interesting
10 question because there's a general figure that most
11 people would probably give. The question is, for
12 purposes of the scientific opinion, may have to
13 narrow it down a little bit more. I assume that
14 the witness probably has some -- she may or may
15 not, a basis for taking that into consideration in
16 the overall analysis.

17 MR. BECKER: I'll rephrase the
18 question.

19 Q. Based on your training and experience for your
20 job, do you have an idea of how many
21 people live on this planet?

22 MR. JUHASZ: Same objection.

1 THE COURT: I think that question
2 may be one that gets into the realm of how fast was
3 the car going. There's a general figure that
4 everybody banter about whether it is true or not.
5 I don't know. I'm going to overrule the objection.
6 I'll let her answer the question if she can, based
7 on her scientific background.

8 A. The figure that I have read -- articles,
9 scientific journals, is approximately 6.1
10 billion people.

11 Q. And the numbers you gave are substantially
12 larger than 6.1 billion?

13 A. Yes, millions times the world population.

14 MR. BECKER: I have nothing further.

15 CROSS EXAMINATION BY MR. JUHASZ:

16 Q. Miss Gerardi, good morning.

17 A. Good morning.

18 Q. Even with all of that, you still don't put in
19 your report, that it is Nate Jackson's
20 blood, right?

21 A. No, it is a statistic.

22 Q. So, you use the word in your report, and here

1 today "consistent", correct?

2 A. We say consistent and then we also say that it
3 cannot be excluded.

4 Q. Let's go back and make sure that I understand,
5 hopefully so the Jury understands what it
6 is that you do. And I'll confess to you
7 in advance that I was a Liberal Arts
8 major, not a science major. If I blow
9 this, I'm sure you will help me out, but
10 I remember back from high school Biology,
11 that old double helix thing that they
12 showed us from the DNA molecule, that is
13 what you're talking about?

14 A. Yes.

15 Q. It was sort of a twisted ladder thing with
16 rungs on it, correct?

17 A. Yes.

18 Q. My understanding is that each of those rungs
19 is what you call a loci, correct?

20 A. No. The location that we're talking about
21 could entail several rungs.

22 Q. So it could be several rungs. But there are a

1 number of those rungs and I think you
2 gave the number 13 that you look at,
3 correct?

4 A. We look at 13 locations, that is correct, and
5 plus a gender site to determine male or
6 female.

7 Q. How many of those locations are there in a DNA
8 molecule?

9 A. I couldn't tell you that.

10 Q. I have heard the number 66,000, does that
11 sound right to you or does it not?

12 A. Locations are different to us than what may be
13 you are thinking of sequencing.

14 Q. Here's what I'm trying to get at. You told us
15 that 99 percent of our DNA is all the
16 same, correct?

17 A. That is correct.

18 Q. And that is the DNA that says you have two
19 eyes and I have two eyes, correct?

20 A. That is correct.

21 Q. You have one nose with two holes and so do I,
22 etc.?

1 A. That is correct.

2 Q. And then the one percent are the obvious
3 differences between us?

4 A. That is correct.

5 Q. And everybody else?

6 A. Right.

7 Q. And do the 13 that you examined constitute the
8 entire one percent or do they not?

9 A. No. They do not.

10 Q. What percent then of the one percent do the 13
11 constitute?

12 A. I could not tell you.

13 Q. Basically, what you do then, if I understand
14 it, is you take these 13 locations,
15 correct?

16 A. That is correct.

17 Q. And you compare that against a data base that
18 in this case was provided to you by the
19 FBI, is that right?

20 A. That is right.

21 Q. You basically statistically project it out and
22 say, the chances of this being somebody

1 else are one in 45 million or whatever

2 that number is you gave here today?

3 A. That is correct.

4 Q. And do you yourself have any idea how many

5 people are in the data base that was

6 given to you by the FBI?

7 A. No, I do not do the FBI. It is a data base

8 that is provided by an FBI computer that

9 we use.

10 Q. You told Mr. Becker and the Jury that you were

11 given standards for Nate Jackson and

12 Robert Fingerhut, am I correct?

13 A. That is correct.

14 Q. Were you supplied standards from anybody else?

15 A. I personally was not supplied that, but they

16 were submitted, yes.

17 Q. So standards for other people were submitted

18 to BCI, correct?

19 A. That is correct.

20 Q. But you did not test any blood or any other

21 DNA against some standard other than

22 Robert Fingerhut and Nate Jackson, am I

1 right?

2 A. That is correct.

3 Q. Assuming that these reports are going to be in
4 evidence, let's go over them for a
5 second. There are three different
6 reports that you submitted in the case,
7 correct?

8 A. That is correct.

9 Q. Would you be kind enough to tell the Jury what
10 the difference is between those three
11 reports?

12 A. The initial report had the visor, a standard
13 from the subject, the standard from
14 Robert Fingerhut and Nate Jackson. A
15 swab from the house and the gauze from
16 the dumpster.

17 Q. I'm still unclear as to what is the difference
18 between the three reports.

19 A. And the second report, there was a request for
20 me to do statistics on the visor, which I
21 did not do on the original report, so the
22 second report is just a statistic for one

1 of the items that I tested on the
2 original report. The third report is
3 additional testing. It was a request to
4 go back and do more samples.

5 Q. All right. So let me see if I have this
6 clear. In the first report, you do some
7 tests of the visor and you say that that
8 visor constitutes a mixture of the DNA,
9 and I'm going to throw the word
10 "consistent" out, so we can get the
11 world's work done here. The DNA of
12 Robert Fingerhut and Nate Jackson, is
13 that right?

14 A. That is right.

15 Q. In the second report, you are asked to load
16 that into your statistics program and
17 tell them what the chances are that it is
18 somebody else?

19 A. Someone else can be a contributor to the
20 mixture.

21 Q. And then the third report, you are asked to go
22 back and do additional testing; is that

1 right?

2 A. More samples, yes.

3 Q. And would you tell us, please, from the third
4 report, what additional items you tested?

5 A. That would be the jacket and the trunk release
6 from the car.

7 Q. So, and do you have information there that
8 tells you from whom that jacket was taken
9 or do you not?

10 A. No, I don't have knowledge of the jacket.

11 Q. Do you remember anything about the jacket?

12 A. I believe the jacket was that of Robert
13 Fingerhut and I can refer to my notes.

14 Q. That would be fine.

15 A. The jacket was being tested by our firearms
16 section, and then the request came in to
17 do a sample from the jacket, so I was
18 called to firearms to look at the jacket
19 and to collect my samples.

20 Q. Do you remember was the jacket a baseball type
21 jacket?

22 A. I do not have a description of the jacket. It

1 was -- I was called to collect my sample
2 before they did their testing that may
3 change my sample.

4 Q. And the guy in firearms, is that Mike Roberts?

5 A. That is correct.

6 Q. So basically, Mike Roberts has a jacket,
7 correct?

8 A. That is correct.

9 Q. And somebody calls you and says, "Hey Brenda,
10 come test this before we do our stuff,
11 because we want you to check the DNA,"
12 correct?

13 A. That is correct.

14 Q. Now, if you can tell us, is that additional
15 testing that is reflected in your third
16 report done as a result of an additional
17 request from the police authorities, or
18 is it as a result of the initial
19 submission? Am I making that clear?

20 A. Yes. As I stated earlier, all items are
21 submitted, and then we narrow the items
22 down. That was not one of the items that

1 we initially decided to test, and then I
2 believe I spoke to Prosecutor Dennis
3 Watkins on what items to be tested after
4 we got our initial results and the jacket
5 was one of them.

6 Q. If this is convenient for you and if it is
7 not, please tell me. Are you able to
8 tell us the submission number of that
9 jacket? Do you know what I mean, the BCI
10 submission number?

11 A. Yes, I can find it. It would be the original
12 submission, item number eight -- our item
13 number eight.

14 Q. So the jacket, just to make it clear, is one
15 of the initial items submitted to BCI,
16 correct?

17 A. That is correct.

18 Q. It is not addition -- I'm sorry, it is not
19 initially tested by you, it is in
20 firearms, correct?

21 A. That is correct.

22 Q. And then you have some recollection that you

1 had a conversation with Mr. Watkins, the
2 County Prosecutor, and as a result, you
3 went over there and pulled a sample to
4 test it?

5 A. That is correct.

6 Q. Are you ever asked to test or analyze for DNA
7 a pair of black and red Nike tennis
8 shoes?

9 A. I didn't do the serology. I did the DNA,
10 which would be the second step. The
11 initial items that come into our
12 laboratory would go to our serology
13 section first and you have already heard
14 the testimony of Dale Laux, so he would
15 be in contact with all of the items
16 coming in. The case had already been
17 turned over to me once the jacket came
18 into play, so that is why I collected the
19 sample, but any shoes or what you are
20 asking for, would have gone through Dale.

21 Q. You are sometimes aware, however, where the
22 samples come from?

1 A. Correct.

2 Q. For example, you testified here today that one
3 of the swabs you were given was taken
4 from the hallway of the residence,
5 correct?

6 A. That is correct.

7 Q. And you testified that that sample is
8 consistent with the DNA of Robert
9 Fingerhut?

10 A. That is correct.

11 Q. Do you have any recollection of anybody giving
12 you a swab from a pair of black and red
13 Nike tennis shoes?

14 A. No.

15 Q. Do you have any recollection of anybody giving
16 you a swab from a T-shirt taken from
17 Donna Roberts?

18 A. No.

19 Q. And you didn't have any conversation with
20 Mr. Watkins about going back and testing
21 that shirt when you were testing the
22 jacket, correct?

1 A. No.

2 MR. JUHASZ: Thank you.

3 MR. BECKER: I have nothing further.

4 THE COURT: Thank you.

5 MR. BECKER: We have no further
6 witnesses until 1:00 p.m.

7 THE COURT: The Jury is excused then
8 until 1:00 p.m. Remember the admonition. Have a
9 nice lunch.

10 (Court in recess at 11:30 A.M.)

11 (Resumed in Open Court at 1:05 p.m.)

12 MICHAEL ROBERTS

13 being duly sworn according to law, on his oath,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. BECKER:

16 Q. Would you please introduce yourself to the
17 Jury, please?

18 A. My name is Michael Roberts. I am a forensic
19 scientist assigned to the firearms
20 department, the Bureau of Criminal
21 Identification and Investigation, or as
22 more commonly referred to by a short

1 acronym of BCI, which is essentially the
2 States' crime lab division, and it is a
3 division office of the State Attorney
4 General's Office.

5 Q. How long have you been at BCI?

6 A. Next month will be 11 years.

7 Q. Can you tell this Jury what your duties are?

8 A. I analyze nearly all evidence pertaining to
9 firearms, excluding the gunshot residue
10 kits that are obtained from hands, but I
11 analyze mostly the firearms. Fire
12 projectiles and fire component of
13 ammunition to attempt to match back to a
14 particular firearm or to exclude a
15 firearm. We also do what is called
16 muzzle to garment approximations.
17 Basically, to see how far away a person
18 was shot at the time of discharge or how
19 far away the person was at the time of
20 discharging of the firearm. Also, we
21 attempt to raise obliterated or gouged
22 out serial numbers on various metal

1 objects. Most commonly what we come
2 across is firearms that have the serial
3 numbers gouged out. We also do tool mark
4 comparisons to attempt to match back
5 marks left at the crime scene to a
6 particular suspect tool.

7 Q. Now, can you tell this Jury the education that
8 you had that has prepared you for that
9 position?

10 A. I have a Bachelor of Arts degree that I
11 obtained from Berea College, located in
12 Berea, Kentucky. I have also completed a
13 six month probationary on-the-job
14 training under two experts in the field,
15 who since retired. Also I have attended
16 several armours courses. Armourous
17 courses are put on by a manufacturer of
18 firearms such as Beretta or Smith and
19 Wesson. It varies in lengths depending
20 on the manufacturer and it just educates
21 each student about the internal mechanism
22 of each firearm. Also attended and

1 completed the McCrome McCrosopy classes,
2 a class dealing with microscopic
3 analysis.

4 Q. And are you a member of any professional
5 organizations?

6 A. Just the Ohio Association of Criminalists.

7 Q. Have you previously testified as an expert in
8 the State of Ohio?

9 A. Yes, Sir, I have.

10 Q. Numerous counties?

11 A. Very many.

12 Q. Including this county, Trumbull County?

13 A. This county as well as this Courtroom.

14 Q. Now, I want you to tell this Jury what exactly
15 firearms identification is and what makes
16 firearms identification possible?

17 A. The basis is the firearms identification is
18 identifying or matching back the fired
19 projectiles or bullets, back to a
20 particular weapon. As well as other fire
21 components such as the cartridge case.
22 Now I'll go into more detail explaining

1 what a cartridge casing and bullet are.
2 Basically, we're attempting to match back
3 components left at the crime scene to a
4 particular weapon or exclude it. The way
5 we can do this is have the suspect weapon
6 and fire the suspect weapon, and we have
7 a water tank and we cover the bullets and
8 cartridge cases, all of the fired
9 components and what we're looking for is
10 unique markings that are put on the
11 bullet as it travels down the barrel. It
12 picks up the unique markings that are in
13 place on the internal part of the barrel,
14 that are then scratched onto the bullet
15 as it passes through the barrel. Then it
16 leaves the firearm, it is going to have
17 that unique pattern onto the bullet. It
18 is going to be impressed onto the bullet
19 as it leaves the barrel. Same principle
20 with the cartridge cases. There's unique
21 markings that are impressed upon the
22 cartridge case. That is going to be

1 unique from one firearm to another, so
2 what we do is we just take knowns or test
3 fires from a weapon that we have
4 submitted into our lab, compare the known
5 or the test fires to the unknowns or the
6 bullets or other components that are left
7 at the crime scenes.

8 Q. And how physically do you do that type of
9 work?

10 A. We have what is called a comparison
11 microscope. It is a comparison
12 microscope that has two stages. It is
13 actually two microscopes in one. That is
14 combined with an optical bridge that
15 allows us to look at two objects with a
16 split screen, not an overlapping screen,
17 but a split screen so you take for
18 example, bullets will take two test shots
19 and put the bullets, one on each stage,
20 and then we'll look for that unique
21 pattern. And once we identify that
22 unique pattern on our test shots, then we

1 move one of the test shots and put the
2 unknown that is recovered from the scene
3 on there and look for that unique
4 pattern. Quite often, there's times
5 where the bullet is damaged to the point
6 where you can't identify, there's not
7 enough markings on it or it is mutilated.
8 For example, if it hits a wall or it hits
9 bone, it has a chance of disfiguring and
10 marring of the bullet where there isn't
11 enough detail to identify or match back
12 to a particular weapon.

13 Q. Now, in the course of your employment, have
14 you been able to examine firearms that
15 were manufactured by the same
16 manufacturer for this type of purpose?

17 A. Yes, we have.

18 Q. And in fact, have you had a chance to examine
19 a firearm that was produced one right
20 after the other, consecutive firearms
21 that were produced by the same
22 manufacturer?

1 A. We have actually analyzed fired bullets that
2 have been fired consecutively made
3 barrels. That is important to know that
4 there's a difference from firearm to
5 firearm. That is what makes firearms
6 identification possible. If I can, I can
7 educate the Jury about the manufacturing
8 of a barrel.

9 Q. Please tell us the manufacturer of the barrel
10 and how this assists you in that job.

11 A. In three basic steps, what happens is that the
12 manufacturer starts with a solid rod and
13 then they will remount the internal
14 portion to a particular diameter, or
15 caliber. And then they will group or
16 they will cut grooves into one end to the
17 other in either a right hand or left hand
18 twist, so inside the barrel, you have
19 raised portions and then you have
20 grooves, so it alternates raised portion
21 and then a groove, raised portion and a
22 groove, and that is in either a right

1 handed or left handed twist. This is so
2 when the bullet goes through the barrel,
3 it picks up the raised portions, and then
4 starts twisting to either the right hand
5 or left handed twist. That is so when
6 the bullet leaves the barrel, it is in a
7 spinning motion, so that the velocity
8 will be maintained for a longer period of
9 time and the accuracy will be greater
10 than if it was just a smooth bore or
11 there wasn't any grooves, the bullet
12 would go straight out the barrel and go
13 end over end and wouldn't be as accurate.
14 Same theory as when the quarterback
15 throws a spiral. He throws a spiral so
16 he can get further distance and more
17 accuracy. Sometimes, I throw these where
18 the ball doesn't spin, and it goes end
19 over end. People call this a lame duck.
20 Same principle. You want to throw a
21 spiral, so that the pass would be more
22 accurate and go further.

1 Q. And when you conduct your examinations, you
2 look for those impressions that are left
3 first on the bullet, correct?

4 A. That is correct, yes, Sir.

5 Q. And also on the cartridge casing?

6 A. Yes, Sir.

7 Q. And that is sometimes from either where the
8 firing pin actually hits the cartridge
9 casing or maybe if it is a semi automatic
10 where it may be extracted from a weapon,
11 correct?

12 A. Exactly, yes, Sir.

13 Q. Now, you also mentioned that -- well, strike
14 that. I want to direct your attention to
15 a case that you were asked to handle that
16 was presented to you by the Howland
17 Police Department here in Trumbull
18 County, Ohio. This would have been back
19 about a little over a year, year and a
20 half ago. Do you recall being called to
21 assist the Howland Police Department?

22 A. Yes, Sir.

1 Q. Now, I want to direct your attention to some
2 State's Exhibits that I have back here.
3 I'm going to ask you to first take a look
4 at State's Exhibit 251. I'll give you
5 State's Exhibit 251, 252 and 252-A. I'm
6 going to hand you these Exhibits and ask
7 if you have seen them before. If you
8 have seen them, how do you know you have
9 seen them?

10 A. First of all, I can recognize the evidence
11 envelope by my initials, with the BCI
12 evidence tape. Also the date that I
13 started my analysis, followed by my
14 initials, and the date I finished my
15 analysis. Also inside is an unloaded
16 weapon that has my initials on the frame.
17 With State's Exhibit 252, I can recognize
18 the envelope by once again the initials
19 over the BCI evidence tape and the date
20 that I started my analysis, followed by
21 my initials, BCI and the date I finished
22 my analysis. Inside is three unfired

1 cartridges with my initials on the
2 cartridge case wall.

3 Q. Now, I am going to hand you what has been
4 marked for purposes of identification as
5 State's Exhibit 266. I'll ask if you
6 recognize what 266 is.

7 A. This would be a fired bullet that I examined.

8 Q. And again would your initials be on there?

9 A. Yes. It is on the base of the bullet as well
10 it is on the envelope. The same
11 principle, initials, BCI, the date I
12 started and finished my analysis.

13 Q. You were also given, or I'm going to hand you
14 State's Exhibits 259 and 257. I'm going
15 to ask if you recognize State's Exhibits
16 257 and 259.

17 A. Yes, I recognize the packaging of 257 by the
18 same markings. The dates that I started
19 and finished my analysis and my initials.
20 It would be a fired bullet as well.

21 Q. The other one is 259?

22 A. 259, same markings, the dates I started and

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1 finished my analysis and my initials and
2 it is a fired bullet.

3 Q. Now, I also want to show you two, the last two
4 Exhibits I have here, number 318 and --
5 that is number 317. And I'm going to
6 hand you State's Exhibit 258. I'll ask
7 if you have seen these items before?

8 A. Yes, this is the jacket that I analyzed, part
9 of the jacket that I cut off as well.

10 Q. And you recognize both of those items?

11 A. Yes, Sir, I do.

12 Q. And --

13 A. It is 258.

14 Q. And then State's Exhibit 317 was a smaller
15 envelope. State's Exhibit 317. That
16 larger bag there.

17 A. I recognize the packaging by the same dates,
18 start and finish and my initials and the
19 evidence tape. I recognize the gloves.
20 They have my initials with the BCI
21 evidence tape on both of those.

22 Q. Is one of those gloves, is there a problem

1 with one of those gloves?

2 A. There's a defect in the left index finger.

3 Q. When you were done with your examinations, did
4 you prepare some written reports
5 regarding your findings?

6 A. Yes, Sir, I did.

7 Q. I'm going to hand you State's Exhibits 282-A,
8 282-B and 282-C. I'm going to ask you,
9 disregard the State's Exhibit numbers in
10 terms of chronological order. I believe
11 you created those reports, or can you
12 look at those and tell me if you created
13 those?

14 A. Yes, Sir, I did.

15 Q. 282-B was the initial report that you
16 generated?

17 A. That is correct.

18 Q. 282-A was a corrected version of 282-B?

19 A. Yes.

20 Q. 282-C is a supplemental report?

21 A. Yes, Sir, it is.

22 Q. I want you to relay to this Jury your findings

1 with respect to the firearm that is up
2 there, and the bullets that you test
3 fired as well as the bullets that were
4 submitted to you that had been fired.
5 Were you able to make any determinations
6 about that gun related to those bullets?

7 A. Sure. I did my examination with the weapon
8 that was submitted, State's Exhibit 251
9 to the submitted fired bullets and I was
10 able to determine through my analysis
11 that the fired bullets were not fired
12 from State's Exhibit 251. Now, without
13 trying to muddy the water, the fired
14 bullets, what we did is -- let me
15 backtrack. The weapon itself has the
16 same number of lands and grooves in the
17 barrel as the fired bullets, however,
18 that pattern that was explained earlier
19 was different than the pattern on the
20 fired bullets, so I was able to eliminate
21 that weapon from firing the submitted
22 bullets, because through my examination,

1 no alteration of the barrel itself, even
2 though they had the same number of lands
3 and grooves or raised portion of the
4 grooves and the direction of the twist,
5 there was no alteration to that firearm,
6 and therefore, that firearm did not fire
7 the submitted bullets.

8 Q. Now, with respect to that testing, you were
9 able to determine -- I just want to be
10 clear as to what we're talking about
11 here. You took five live rounds that
12 were in 252 that were State's Exhibit
13 252, is that correct?

14 A. That is correct.

15 Q. And you fired two of those rounds out of
16 State's Exhibit 251?

17 A. Yes, Sir, I did.

18 Q. And then you took -- then what did you do with
19 the fired rounds that you fired out of
20 State's Exhibit 251, which is that 38?

21 A. First of all, what I did with the submitted
22 bullets is I looked for those pattern,

1 that unique pattern that is going to be
2 different from firearm to firearm. It is
3 unique in this case, I found the three
4 that were submitted, were all fired from
5 the same firearm and I detected that
6 unique pattern with sufficient detail
7 there to identify or match all three
8 bullets to each other.

9 Q. You are referring to State's Exhibits 259, 257
10 and 266?

11 A. That is correct. Three submitted fired
12 bullets were the bullets that were
13 recovered either from the body or the
14 crime scene. Then what I did is I took
15 two unfired cartridges that were
16 submitted to our laboratory and I put it
17 inside the submitted weapon, and I took
18 two test fires to show A, that the gun
19 was operable and B, to recover the fired
20 bullets. So I could recover the fired
21 bullets and then put the two fired
22 bullets that were test fired from that

1 weapon, we'll call them the known
2 bullets, and look for the pattern that is
3 unique to that firearm. I detected the
4 pattern there and then compared that
5 pattern to the submitted fired bullets
6 recovered from the body or the scene,
7 and I was able to determine that patterns
8 did not match and, therefore, that the
9 three bullets that were submitted to our
10 laboratory that were recovered from the
11 body or the scene were not fired from the
12 submitted weapon.

13 Q. Now the three recovered and that is within a
14 reasonable degree of scientific
15 certainty?

16 A. Yes.

17 Q. Now with a reasonable degree of scientific
18 certainty, were you able to determine
19 whether State's Exhibit 266, 257 and 259,
20 were they fired from the same weapon?

21 A. Yes, they were.

22 Q. With a reasonable degree of scientific

1 certainty, you were able to determine
2 that?

3 A. Yes, Sir.

4 Q. And one of those had actually been recovered
5 from the body of the victim, correct?

6 A. Yes, Sir.

7 Q. And the damage that sometimes can occur when a
8 bullet strikes bone was not -- was not so
9 great as to make your determination
10 difficult?

11 A. That is correct. I was able to identify the
12 bullet.

13 Q. Now, you also did some testing, I believe, on
14 some clothing, is that correct, the
15 jacket, as well as the gloves, is that
16 correct?

17 A. Yes, Sir.

18 Q. What kind of testing did you do on the jacket
19 and the gloves?

20 A. We do a visual examination and then a chemical
21 examination for the presence of gunshot
22 residue.

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1 Q. And what, can you tell this Jury what gunshot
2 residue is and what causes gunshot
3 residue?

4 A. In an unfired cartridge, inside the cartridge
5 case, which is this brassy colored area
6 here is powder, when the firearm strikes
7 the metal prong called the firing pin,
8 strikes the primer, it causes that little
9 internal spark and then that causes the
10 powder to start burning. And the
11 pressure is built up so great that the
12 bullet has to escape in the path of least
13 resistance which is down the barrel, so
14 as the bullet goes through the barrel and
15 leaves the barrel, the powder then is
16 spewed out the end of the muzzle or the
17 end of the barrel and in a cone shaped
18 pattern, so the further away the object
19 is when it is hit, the more disperse the
20 pattern is going to be. The closer the
21 person is to the gun when it is
22 discharged, the more concentrated the

1 pattern would be. It will go out to a
2 flashlight or beam pattern. It will be
3 consistent from shot to shot at two feet.
4 If you fire the gun at a distance of two
5 feet, recovered the residue pattern, it
6 is going to be the same if you fired it
7 again at two feet and recovered the
8 residue pattern. It will be the same at
9 six feet. What we look for is two
10 components of gunshot residue. We
11 concentrate on nitrites, then we also
12 look for lead residue. The reason we
13 concentrate on nitrites is because
14 nitrites is a component of the burning of
15 gun powder. Now lead is a component of
16 gunshot residue. It could be from the
17 primer, it could be from the bullet. It
18 could be from the base of the bullet, if
19 the base is exposed because if, the core
20 of the bullets are generally lead alloy,
21 sometimes the lead could flake off, that
22 is why we concentrate on the nitrites,

1 because the nitrites are what is going to
2 be out in the cone shaped pattern. The
3 lead just helps verify that the gunshot
4 residue was present. So, what we do is a
5 visual examination of the clothing for
6 partially burned or unburned gun powder
7 particles around the suspected bullet
8 hole. We also look for a characteristic
9 of contact. What this means is when a
10 gun is discharged pressed against an
11 article of clothing, hot gases, as I
12 explained, are going to be released, or
13 when the gun, the bullet goes through the
14 clothing, the clothing is going to rip
15 and it is going to rip at 90 degree
16 angles and also since it is very hot gas
17 being escaped out the end of the barrel,
18 depending on the type of materials, it is
19 either going to burn or it is going to
20 melt. So we look -- those are
21 characteristics of contact, discharge,
22 the end of the gun is touching the

1 clothing. We look for contact
2 characteristics and also we look for gun
3 powder particles. That is an indication
4 of very close range. What is going to
5 happen, the further away you get from the
6 firearm as it is discharged, like I said,
7 the pattern is going to be more disperse,
8 where you get to an area such as six
9 feet, approximately six feet, then the
10 gunshot residue pattern is going to start
11 dropping off, then you may have a bullet
12 hole, but you may not have gunshot
13 residue. And that can be explained by
14 being at greater distances or other
15 variables. But like I said, the gunshot
16 residue is going to go out in a cone
17 shaped pattern about six feet or so and
18 then it will start dropping off. What we
19 look for is the contact characteristics,
20 microscopically, the gun powder
21 particles, and when you try to chemically
22 raise out the nitrites and the lead

1 patterns.

2 Q. Did you do that with reference to that jacket,
3 which is State's Exhibit 258 and the
4 gloves, which is State's Exhibit 317?
5 Did you do those kinds of things?

6 A. Yes.

7 Q. And did you have any findings or make any
8 discoveries that, with respect to those
9 two Exhibits?

10 A. Well, in regards to the jacket, I was able to
11 detect a chemical reaction of four points
12 of nitrites, meaning there's four spots
13 of nitrites, not being a pattern in
14 itself, I couldn't establish the
15 distance. There could be a number of
16 reasons why you have four specks on
17 there, but since there's not identifiable
18 pattern, I cannot determine at what
19 distance the firearm was discharged at
20 the time. The gun itself -- or excuse
21 me, the glove had a vaporous lead on the
22 area around the defected finger, the left

1 index finger. That is an indication of
2 being very close to a firearm at the time
3 of discharge. The vaporous lead is an
4 indication of being from the primer, and
5 the vaporous lead is only confined in a
6 short distance.

7 Q. Now, with a reasonable degree of scientific
8 certainty, then, can you say whether that
9 glove was damaged or that defect was part
10 of a firearm shot?

11 A. Well, it is consistent with being at close
12 range of a firearm. Since there's no
13 nitrites or there's not a distinct bullet
14 hole or what we consider a bullet wipe.
15 It is basically you have a hole and then
16 you have a lead ring around it. That is
17 a bullet wipe.

18 Q. Did you discover any bullet holes on the
19 jacket?

20 A. Yes, I did. There were four defect holes.

21 Q. And you have testified to those?

22 A. Yes. Excuse me, there's three.

1 Q. And you printed -- or I'm sorry, you created
2 your reports, which are the three reports
3 that I previously asked you about, your
4 findings are contained in those reports?

5 A. Yes, Sir.

6 Q. And those are fair and accurate copies of the
7 original reports, right?

8 A. Yes, Sir.

9 Q. Now with respect to -- with respect to State's
10 Exhibits 257, 259 and 266 -- which 266 is
11 the projectile recovered from the brain
12 of the victim. 257 was recovered from
13 the clothing -- I'm sorry, 257 was
14 recovered from the wall, and 259 was
15 recovered from the clothing of the
16 victim. Were you able to determine --
17 first of all, you were able to determine
18 that they were all fired from the same
19 firearm, correct?

20 A. Yes, Sir.

21 Q. Were you able to determine what caliber those
22 bullets were fired from with a reasonable

1 degree of scientific certainty?

2 A. Yes, they exhibited .38 special or .357
3 magnum. Really, I should say and/or. A
4 .357 magnum and .38 special, you can fire
5 the same bullets. The only difference is
6 that the .357 magnum cartridge case, this
7 portion here is approximately one-tenth
8 of an inch longer, so it has more power,
9 more powder.

10 MR. BECKER: I have no further
11 questions of this witness.

12 CROSS EXAMINATION BY MR. JUHASZ:

13 Q. Hi, Mr. Roberts.

14 A. Hi, Mr. Juhasz.

15 Q. Let's go back to the last thing that you were
16 talking with Mr. Becker about if we can.
17 You said a .38 or .357?

18 A. .38 special, .357 magnum.

19 Q. Difference is the bullets in the .357 is
20 longer?

21 A. The cartridge case length. The bullets are
22 the same.

1 Q. You could fire a .38 from a .357, a .38
2 bullet?

3 A. Yes, you can fire a .38 special in a .357.

4 Q. How many sorts of weapons like that are there
5 in the world, .38 specials?

6 A. Many.

7 Q. How many .357?

8 A. Many.

9 Q. So if we wanted to get a list of the possible
10 weapons that fired these bullets, it
11 would be a long list?

12 A. I have a list of possible sources, possible
13 weapons based on the number of lands and
14 grooves and the direction and twist, but
15 there's many of those types. There's
16 many, for example, Taurus, there would be
17 many guns made of that particular model.

18 Q. The gloves that you were asked to examine.

19 First of all, you look for two things if
20 I understand it, vaporous lead, correct?

21 A. We found that, yes.

22 Q. But I am talking about what you are looking

1 for initially. You look for two things.

2 Vaporous lead, correct?

3 A. Yes.

4 Q. And nitrites?

5 A. Yes, we look for lead and nitrites, yes, Sir.

6 Q. Can the bullet itself carry any specks of the
7 nitrites?

8 A. Yes, Sir.

9 Q. When you shoot the gun, the bullet comes out,
10 right?

11 A. Yes.

12 Q. The gases come out, correct?

13 A. Yes.

14 Q. And that is the cone shape that you talk about
15 as carrying some of these nitrites with
16 it?

17 A. I could see that, yes, Sir.

18 Q. It stands to reason that some nitrites could
19 get on the bullet itself?

20 A. Yes.

21 Q. On the jacket, you found four tiny little
22 specks of nitrites?

1 A. Yes, four point reactions, yes, Sir.

2 Q. You have indicated that the best you can say
3 is that it is something further than
4 contact, right?

5 A. That is correct, yes.

6 Q. All you can say is that the gun wasn't right
7 next to the jacket when it was fired,
8 right?

9 A. That's correct.

10 Q. And beyond that, you really can't say whether
11 it is two feet, six feet or 20 feet?

12 A. That is correct.

13 Q. On the glove, you found vaporous lead, is that
14 right?

15 A. That is correct.

16 Q. Is that something that a bullet can carry,
17 also?

18 A. No. I wouldn't think so. Vaporous lead is
19 from the primer. It doesn't actually
20 touch the bullet itself.

21 Q. So there's no way it can get on the bullet as
22 it is traveling through the chamber?

1 A. I wouldn't think so because the primer is back
2 here at the base of the cartridge case
3 and the bullet is at the very end, so
4 when the bullet is discharged, you are
5 still going to have the powder in
6 between, so the vaporous lead is going to
7 stick around the weapon, it is not as
8 heavy as the nitrites.

9 Q. Now when you say stick around the weapon
10 though, I can have vaporous lead, for
11 example if I held a gun right here, is
12 that six, eight in inches from my left
13 arm and shot, I could get vaporous lead?

14 A. Depending on the weapon, I have to do some
15 tests, but I would say within six inches
16 would be common.

17 Q. My point is, it doesn't have to be direct
18 contact?

19 A. It doesn't have to be contact.

20 Q. So then, when the gases are coming out, then
21 the bullet is coming out, the vaporous
22 lead is also coming out?

1 A. Yes.

2 Q. But you are saying that even though it is all
3 coming out, there's no way the vaporous
4 lead can actually get stuck on the
5 bullet?

6 A. I wouldn't think so. I find that hard to
7 believe.

8 Q. In this case, you have got vaporous lead on
9 this glove, right?

10 A. Yes.

11 Q. But no nitrites?

12 A. That is correct, yes, Sir.

13 Q. And you mentioned something about that the
14 patterns would always be the same. If I
15 took the same weapon and shot it at this
16 podium from three feet three different
17 times, I would have the same pattern,
18 right?

19 A. Yes.

20 Q. How about environment, can that affect that at
21 all?

22 A. Yes.

1 Q. A 40 knot cross wind would change that, right?

2 A. Yes.

3 Q. When you were talking to Mr. Becker, I thought
4 I heard you use the phrase concerning the
5 Taurus, about there's no alteration of
6 the gun?

7 A. Of the internal barrel, yes. For example,
8 scratches that were put on by a foreign
9 object, that would change the
10 characteristics of the pattern.

11 Q. So you are not talking about a weapon that has
12 never been fired?

13 A. No.

14 Q. You are talking about something that may have
15 happened for example, when cleaning the
16 gun or something like that?

17 A. Yes, depending on what you use to clean the
18 gun, if it is a heavy metal that you are
19 using as a wire brush, that would be an
20 indication that would show alteration or
21 at least mar up the pattern to make that
22 identification. It would be detected.

1 Q. You were telling the Jury about the comparison
2 microscope that you use. Is that a
3 microscope where you have the ability to
4 take photographs of what is compared?

5 A. We don't have cameras put onto the comparison
6 microscopes.

7 Q. That wasn't my question. Capability. Can you
8 hook a camera up to that?

9 A. Yes.

10 Q. If you guys wanted to, you could hook a camera
11 up and bring us a picture of what you
12 compared?

13 A. Actually, we have a purchase order in for one.

14 Q. Up to this point, BCI has chosen not to hook
15 cameras up to these microscopes?

16 A. Yes, Sir.

17 Q. We don't have the ability to see a picture of
18 what you compared in the laboratory?

19 A. That is correct.

20 Q. Were you ever given a .38 Smith and Wesson to
21 test in this case?

22 A. I don't believe so, no, Sir.

1 Q. Just the Taurus that you have in front of you?

2 A. Yes, Sir.

3 Q. Now, if I understood what you said before,
4 Mr. Becker was asking you questions about
5 sequentially manufactured weapons?

6 A. Yes.

7 Q. What you are saying is if you and I went to
8 the Smith and Wesson outlet store,
9 wherever it is, right outside the Smith
10 and Wesson factory and you bought gun
11 1000, and I bought a gun 1001, that were
12 exactly the same make and model, there
13 would be different firing characteristics
14 that you would be able to see under the
15 microscope.

16 A. When you have the serial number 1000, 1001, it
17 doesn't necessarily mean that the two
18 barrels were sequentially made. It just
19 means that the frames were sequentially
20 made, so what I was explaining is that
21 consecutively made barrels, where we have
22 actually were tested, the comparison of

1 consecutively made barrels, and each
2 barrel had different patterns, because
3 what we're looking for is the tooling or
4 the manufacturing of the barrel. It is
5 constantly changing as the barrel is
6 being made.

7 Q. Okay. So we're not talking about consecutive
8 made guns, but consecutively made
9 barrels?

10 A. That is correct.

11 Q. You are saying that there's a difference in
12 the markings that each would produce?

13 A. Yes, Sir.

14 Q. And so to have a comparison that you can come
15 into Court and say, "This gun fired these
16 bullets," you would have to have to have
17 the actual gun?

18 A. Yes. You would have to have something to
19 compare it to, yes, Sir.

20 Q. Not just something to compare it to, because
21 two Smith and Wesson .38's wouldn't do
22 you any good, you would have to have the

1 Smith and Wesson .38 that fired the
2 actual bullets?

3 A. Yes, to identify it to match back to the
4 weapon.

5 Q. You are telling me that each one makes unique
6 markings?

7 A. Yes.

8 Q. It would be like you put a finger on here and
9 I put a finger on here, you need to have
10 the exact one to match the prints?

11 A. Yes.

12 Q. So, if I want to make you a Patsy for my
13 murder, a murder that I'm going to
14 commit, I would actually have to leave
15 the weapon that would be attributed to
16 you, right?

17 A. Explain that again. It took me off guard.

18 Q. If I commit a murder under circumstances where
19 I wanted to pin the murder on you, Mike
20 Roberts. Maybe I knock you out and after
21 I knock you out, I shoot Jerry over
22 there. It doesn't do any good for me to

1 take the gun, because then they are not
2 going to match up the bullets if I took
3 the gun. If I want to pin it on you,
4 I'll leave the gun by you, the actual gun
5 that fired the bullets?

6 A. I don't know about pinning it, but the bullets
7 that would be fired by that gun would be
8 identified back to that gun, yes.

9 Q. Let's forget about all of the Exhibit numbers
10 for a second, just to make sure that the
11 Jury understands what happened here. You
12 get three fired bullets submitted to you,
13 correct?

14 A. That is correct, yes.

15 Q. One from Mr. Fingerhut's brain, correct?

16 A. Correct.

17 Q. One found on Mr. Fingerhut's clothing,
18 correct?

19 A. That is correct.

20 Q. One found in the dry wall?

21 A. Correct.

22 Q. You get submitted to you only one gun, right?

1 A. Correct.

2 Q. The Taurus .38?

3 A. Correct.

4 Q. All three of those bullets that were submitted
5 to you were fired from the same gun,
6 correct?

7 A. Correct.

8 Q. And it was not the Taurus .38?

9 A. Correct.

10 Q. And the gun that fired them has never been
11 submitted to you?

12 A. That is correct.

13 MR. JUHASZ: That is all I have.
14 Thank you.

15 MR. BECKER: I have nothing further.
16 Cynthia Mayle.

17 CYNTHIA MAYLE

18 being duly sworn according to law, on her oath,
19 testified as follows:

20 DIRECT EXAMINATION BY MR. BECKER:

21 Q. Could you please introduce yourself to the
22 Jury?

1 A. Good afternoon. I am Cynthia Mayle, from
2 Attorney General Jim Petro's Office, the
3 Bureau of Criminal Identification and
4 Investigation.

5 Q. And what do you do for the Attorney General's
6 Office Bureau of Criminal Identification
7 and Investigation?

8 A. I am currently a latent print examiner,
9 forensic scientist and the forensic
10 science coordinator for the State of Ohio
11 for the discipline of latent prints.

12 Q. Can you briefly describe for this Jury the
13 training and education you had that
14 prepared you for that position?

15 A. Certainly. Briefly, I have a Bachelor's
16 degree from Cleveland State University.
17 After approximately one year in
18 Philadelphia Police Department as a
19 fingerprint examiner, and also ten years
20 at the Cleveland Police Department as a
21 fingerprint examiner, I was employed by
22 the Attorney General's Office,

1 approximately eight years ago. So, all
2 totaling, I'm in excess of 18 years in
3 latent prints examination. I have
4 attended over a thousand hours of
5 continuing education. I also am an
6 educator myself for international
7 conferences of forensic scientists in the
8 discipline of latent prints and crime
9 scene investigation. I am also a trainer
10 for our specific field for the Attorney
11 General's Office for the State of Ohio.

12 Q. And can you describe for this Jury, the
13 process of fingerprint analysis, what
14 makes it possible?

15 A. I'm not quite sure I understand.

16 Q. What is -- tell us what you do at the lab.

17 A. What you are asking about is the basic factors
18 of fingerprints. The basic factors are
19 that no two fingerprints from two
20 individuals have been shown to be alike.
21 That is, the fingerprints are permanent
22 and individually unique. They are

1 permanent in that they form in the womb
2 approximately the 12th week after
3 conception and they remain permanent
4 throughout your lifetime until
5 decomposition after death. This has been
6 proven within the forensic science field
7 and has been recognized for over 100
8 years in the modern Courts today.

9 Q. And what do you look for when you make an
10 examination of a fingerprint? Is there
11 certain characteristics that you look
12 for, and if there are, what are they
13 called?

14 A. Back to some basic principles. Present on the
15 palms of your hands and the soles of your
16 feet, is skin which is far different from
17 other areas of your body. Unlike other
18 areas of your body, this skin has roughed
19 raised portions, which we call ridges.
20 Those ridges don't flow from one of the
21 hand or finger to the other in a nice
22 continuous flow, rather they move and

1 they form patterns. Those patterns have
2 been identified, and we use those
3 patterns to make comparisons, from an
4 inked impression which would be
5 fingerprint card, perhaps taken for
6 identification purposes to a latent
7 print, which would be a print that we
8 have developed or made visible, from a
9 piece of evidence, or from a crime scene.
10 When we conduct examinations, we're not
11 simply looking at that particular pattern
12 as an identifying characteristic, it is
13 one characteristic, but we actually look
14 at the details within the ridge flow,
15 what we call ridgology. Those minute
16 details within the actual fingerprint
17 pattern itself, such as a ridge ending,
18 or minute as pores, and the structure of
19 pores help us to determine if one person
20 has made that print that had been left
21 behind on an object or we have developed
22 in the laboratory.

1 Q. Now, in your experience as an analyst for BCI,
2 have you been qualified and testified in
3 Courtrooms?

4 A. Yes, I have testified in the Courtrooms of
5 Ohio, and Federal Courts in excess of 100
6 times.

7 Q. And you have been qualified as an expert in
8 those Courts?

9 A. Yes, I have.

10 Q. Including the Courtrooms here in Trumbull
11 County, Ohio?

12 A. Yes, I have.

13 Q. And I think including this very Courtroom?

14 A. Yes.

15 Q. Now I want to direct your attention to
16 analysis that you performed, I believe
17 sometime in February of 2002 to assist
18 the Howland Police Department here in
19 Trumbull County, Ohio. Would you have
20 created a report in reference to your
21 findings?

22 A. Yes, I did.

1 Q. I'm going to hand you what has been marked for
2 purposes of identification as State's
3 Exhibit 283. It is a two page
4 document -- and ask if you recognize
5 State's Exhibit 283?

6 A. Yes, I do. This is a report, a copy of a
7 report which I have signed that I
8 produced on 2-13-2002.

9 Q. And would that report also indicate the items
10 that were submitted to you for your
11 examination?

12 A. For my examination and within the latent print
13 section, yes.

14 Q. Your personal examination?

15 A. Yes.

16 Q. Can you just tell this Jury what it is that
17 you examined in reference to this case
18 for latent fingerprints?

19 A. Certainly. Item three submitted -- let me
20 correct and start this over -- submitted
21 on 12-14-01, by Detective Sergeant
22 Monroe, to the laboratory for the latent

1 print section examination, under Case
2 number 0135755. I have received and
3 examined item three, a Taurus .38 caliber
4 revolver, serial number JH14188. Item
5 number four, live rounds. Item number
6 24, a plastic placemat. Item number 25,
7 a plastic tray. Item number 26,
8 post-mortem fingerprints of Robert
9 Fingerhut. Item number 27, copies of
10 fingerprint cards of Nathaniel E.
11 Jackson. And item 28, a Chrysler 300-M
12 vehicle, license plate number CPA 8225.
13 Submitted on 12-18-2001, by Detective
14 Sergeant Pizzullo for latent print
15 section specifically, under case number
16 0135755-A were items A-5, a gauze with
17 stain and a piece of tape. A-10 a
18 plastic bottle, A-11, bandage container.
19 A-12 an empty paper tape package. A-13,
20 empty bandage container. A-14, an empty
21 sponge container. A-15, empty sponge
22 container. A-16 an empty sponge

1 container. A-17 an empty sponge
2 container. Also included was item A-18,
3 an empty envelope. A-19 is also an empty
4 envelope. A-20, keys. A-21, cell phone.
5 A-22, garage door opener. A-23, a CD.
6 Submitted on 12-19-2001, by special agent
7 Lulla for the latent prints section
8 examination, under case number 0135755-B
9 was item B-8 latent lifts; item B-9 inked
10 fingerprint and palm print cards of
11 Jennifer Robinson.

12 Q. Were you given any fingerprints or palm prints
13 at some point of Nate Jackson?

14 A. Yes, I was.

15 Q. Now, I want to ask you with respect to those
16 items that you have just read, were you
17 able to find any fingerprints on any of
18 those items?

19 A. Yes. May I refer to my notes?

20 Q. Yes.

21 A. As I did identify eight partial latent
22 fingerprints.

1 Q. And can you recall where those eight latent
2 partial fingerprints were located at, on
3 what Exhibits or what items?

4 A. Item A-18 is an empty envelope and that had
5 three partial latent fingerprints and
6 item B-8 was an envelope containing
7 latent lifts and that had five partial
8 latent fingerprints and one partial
9 latent palm print.

10 Q. Those were submitted to you by Ed Lulla?

11 A. Yes.

12 Q. And were you able to make a comparison of any
13 known fingerprints that were submitted to
14 you and make a match?

15 A. Yes, I did. I compared the eight partial
16 latent fingerprints that were developed
17 in this case, and compared those to the
18 fingerprints of Robert Fingerhut, Nate E.
19 Jackson, and Jennifer Robinson.

20 Q. And with a reasonable degree of scientific
21 certainty, were you able to make a
22 determination as to who the latent

1 print -- first of all, the latent lifts
2 that Ed Lulla gave you from the Days Inn,
3 whose fingerprints did those match?

4 A. I did identify the latent fingerprints
5 submitted by special agent Lulla. I
6 identified the left index finger, the
7 right middle finger, the right ring
8 finger, the right index -- excuse me. I
9 need to start this over. I identified
10 the right index finger, right middle
11 finger, right ring finger, and two right
12 little fingers; a total of five
13 identifications to Nate Jackson.

14 Q. And can you tell this Jury how you made that
15 comparison, how you visually did that or
16 how you scientifically did that?

17 A. Sure. Each latent is taken individually and
18 examined for the minute details of
19 identification which we call points of
20 identification. Those identification
21 points are compared to the individual's
22 fingerprint cards submitted. In other

1 words, the fingerprint cards of Robert
2 Fingerhut, Nate E. Jackson, and Jennifer
3 Robinson. During those examinations,
4 each fingerprint, each latent print is
5 compared to the fingerprint card for
6 possible identification. We look at
7 again, the minute ridge detail that I
8 mentioned previously in my testimony for
9 identifying characteristics in each of
10 the cards and that I have identified five
11 from those latent lifts submitted from Ed
12 Lulla.

13 Q. Now, were there some items that you were not
14 able to -- strike that. Is there such a
15 thing as insufficient ridge detail? Do
16 you speak in that type of item or
17 finding?

18 A. There's a number of definitions we do use and
19 one is insufficient ridge detail. And in
20 examining evidence, there are a number of
21 factors why we would not develop a
22 sufficient ridge detail. In other words,

1 enough quantity of ridge detail with
2 points of identification in order for me
3 to make a comparison against that. There
4 are a number of factors, basically we
5 refer to four primary factors as to why
6 we may not leave a fingerprint behind,
7 and those four are, surface, sweat,
8 contact and environment. The first thing
9 is surface. If I touch an item and the
10 item is perhaps bumpy or textured like a
11 lot of items are today, such as a
12 refrigerator or dashboard, the ridge
13 detail I leave behind is not going to
14 have a lot of continuity because that
15 texture is, the surface is so bumpy, so
16 is the surface itself. Sweat,
17 perspiration, is exuded from the minute
18 portion on the surface of our hands, and
19 so if you exude profusely, perspire, then
20 you will perhaps smudge or smear that
21 print because your hands are so wet, so
22 we might not get a clear impression that

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1 way. Contact is how I actually handle an
2 item. If you think of a rubber stamp and
3 if I have too much ink on that stamp and
4 I put it down on something, it is going
5 to press down and smear around. How you
6 actually handle an item is what might
7 cause you to not leave a latent print or
8 value behind, and if I handle a pair of
9 scissors and I use that motion in
10 handling that item, causes a lot of
11 smearing of the fingerprint. The
12 environment is simply that the outside
13 environment does have an effect on latent
14 prints left behind on items, specifically
15 like rain or inclement weather would
16 likely wash away any latent print residue
17 left behind.

18 Q. Did you take any photographs in connection
19 with this case during your examination?

20 A. Yes, I did.

21 Q. What did you take photographs of?

22 A. I took photographs of item A-18, which was an

1 empty envelope. On that envelope, I
2 developed three fingerprints and I
3 photographed those three fingerprints for
4 identification purposes.

5 Q. And were you able to determine or make to a
6 reasonable degree of scientific certainty
7 a match on those fingerprints?

8 A. Yes, I did. The three fingerprints developed
9 on that envelope were identified as the
10 right thumb, the right middle finger and
11 the right ring finger of Nate Jackson.

12 Q. And I'm going to hand you what has been marked
13 as State's Exhibit 309 and 309-A and ask
14 if you recognize what is 309 and 309-A
15 are?

16 A. Yes. 309 is an envelope submitted to the
17 laboratory as item number A-18. I
18 recognize it from my initials, when I
19 opened the case on 2-7-2002 and when I
20 finished examination of this item on
21 2-13-02.

22 Q. And that is the envelope that you were

1 referring to?

2 A. No, that is simply the bag that contained the
3 envelope. 309-A is what was contained in
4 this paper bag as it was submitted to the
5 laboratory and that is an envelope which
6 is identified by my initials, the case
7 number and the date, 2-7-02, my initial
8 examination date of this item.

9 Q. And now I'm going to show you what has been
10 marked for purposes of identification as
11 State's Exhibits 395-A, B -- well, I
12 guess it is just A and B. 395-A and B
13 and ask if you recognize 395-A and B?

14 A. 395 is a latent lift -- excuse me, lifts
15 submitted to the laboratory for
16 examination. Identified by the case
17 number, my initials and the date of
18 examination, 12-13-02. 395-B is also
19 latent prints submitted to the
20 laboratory, identified by the case
21 number, my initials and the examination
22 date of 2-12-2002.

1 Q. And you were able to determine who those
2 fingerprints belonged to within a
3 reasonable degree of scientific
4 certainty?

5 A. The fingerprints on these three piece of
6 evidence, 309-A, 395-A and 395-B have all
7 been identified to Nate E. Jackson. That
8 is 309-A, 395-B.

9 Q. I'm going to show you 391 and 391-A. I'm
10 sorry, there's four prints in there.
11 I'll ask if you recognize 391-A.

12 A. 391 is the envelope containing 391-A, which
13 are copies of the fingerprint cards
14 identified as Nate Edward Jackson,
15 identifiable by myself by the case
16 number, my initials and the examination
17 date on them.

18 Q. Those are the prints that you use to make
19 those comparisons to those latent lifts
20 that you referred to?

21 A. Yes, those are the actual fingerprint cards I
22 use to compare against the latent lifts

1 developed.

2 Q. Now, your report that has been previously
3 marked as State's Exhibit 283.

4 A. State's Exhibit 283.

5 Q. That is a fair and accurate copy of your
6 report and your findings in this case?

7 A. Yes, it is.

8 Q. And it bears your signatures?

9 A. Yes, it does.

10 Q. And it reflects the fact that Nate Jackson's
11 fingerprints were found or matched the
12 lifts within a reasonable degree of
13 scientific certainty from the Days Inn
14 lifts that Ed Lulla submitted to you,
15 including the room card, that envelope?

16 A. That is correct.

17 MR. BECKER: I have nothing further.

18 CROSS EXAMINATION BY MR. JUHASZ:

19 Q. Good afternoon. The Chrysler automobile that
20 you examined, I think it was item 28.

21 When was that submitted to you, item 28?

22 A. Lab number 0135755 was submitted as item 28 on

1 12-14-2001.

2 Q. And you went over that car yourself?

3 A. I was part of a group of people that examined
4 the vehicle, yes.

5 Q. And that car was silver in color, I believe?

6 A. I don't know. I didn't write down the vehicle
7 color as an identifiable characteristic.

8 Q. A Taurus gun was submitted to you for
9 fingerprints as well, correct?

10 A. Yes.

11 Q. You found some ridge detail, but not enough to
12 compare them to anybody's prints,
13 correct?

14 A. That is correct.

15 Q. You found the ridge detail on the gun near the
16 logo, is that right?

17 A. Yes, I did.

18 Q. The standards that were submitted to you, and
19 by the way, when we say standards, what
20 we're talking about is when Mr. Becker
21 just showed you those fingerprint cards
22 of Nate Jackson; those are standards,

1 right?

2 A. Yes.

3 Q. You know these are so and so prints, so you
4 can compare your latent prints to them,
5 correct?

6 A. They are submitted to the laboratory with
7 names on them. I couldn't testify that
8 those were those particular people's
9 fingerprints, because I did not take
10 those fingerprints. We refer to those as
11 standards. They are labeled, usually
12 typed in the front is the name of the
13 person and signed by the person, so we do
14 make the assumption that they are that
15 person.

16 Q. On the car, you find no prints that you can
17 compare, is that right?

18 A. That is correct.

19 Q. So we have some prints on the gun, but you
20 can't compare them, right?

21 A. Correct.

22 Q. Some prints on the car, but you can't compare

1 them, correct?

2 A. That is correct.

3 Q. We mentioned a second ago standards, the
4 standards submitted to you in this case
5 were from Robert Fingerhut, correct?

6 A. Yes.

7 Q. Nate Jackson, right?

8 A. Yes.

9 Q. Jennifer Robinson, correct?

10 A. Correct.

11 Q. And no one else?

12 A. No.

13 Q. You don't find Jennifer Robinson's prints
14 anywhere in the hotel room, is that
15 right, from the lifts taken from the
16 hotel room?

17 A. That is correct.

18 Q. You don't find Donna Roberts' prints on
19 anything submitted to you because no one
20 gives you the standard for her prints for
21 to you compare them to, is that also
22 correct?

1 A. That is correct. There were no fingerprint
2 cards submitted of Donna Roberts. There
3 were eight fingerprints developed as
4 identified in this case and they were all
5 identified to Nate Jackson.

6 Q. But even if you wanted to find out if Donna
7 Roberts' prints were on something, you
8 wouldn't be able to do it, because no one
9 sent a card to say, "These are Donna
10 Roberts' prints?"

11 A. I believe the reason why they did not submit
12 her prints is because all of the
13 fingerprints available had been
14 identified. There were only eight found
15 in all of the evidence and all eight of
16 those fingerprints were found to be Nate
17 Jackson's.

18 Q. When were the prints submitted to you?

19 A. The fingerprints of Nate Jackson were
20 submitted on 12-14-2001, as well as the
21 fingerprint cards of -- post-mortem
22 prints of the victim.

1 Q. On 12-14-01?

2 A. That is correct.

3 Q. You have Jackson's and Fingerhut's on
4 12-14-01?

5 A. That is correct.

6 Q. When do you get Jennifer Robinson's? That is
7 on the B submission, I believe.

8 A. Yes. Jennifer Robinson's fingerprints were
9 submitted on 12-19-01.

10 Q. So by 12-19-01, you have all of the three
11 standards that were given to you in this
12 case, is that right?

13 A. That is right.

14 Q. You have some notes there, don't you, from
15 when you were testifying as to when you
16 actually did your fingerprint analysis,
17 correct?

18 A. Yes, I do.

19 Q. Tell us please when you did those.

20 A. I started my examination on 12-14-01.

21 12-14-01 and I completed my examination
22 on 2-13-02.

1 Q. What is it that you do on 12-14 as far as
2 fingerprint analysis?

3 A. On 12-14 --

4 Q. Before you answer that, I want to make clear.
5 You did say you started your analysis on
6 12-14, correct?

7 A. 12-14-01, yes.

8 Q. Tell us please what you did on 12-14.

9 A. On 12-14-01, I can't say exactly what I would
10 have done, but I would probably have
11 started the examination by pulling the
12 evidence from the evidence room submitted
13 to me. The next date, I would work other
14 cases involved as well as this case. I
15 don't work just one case at a time. So,
16 I don't exact dates. The car I examined
17 on 12-18. Started examination on 12-18.

18 Q. Let me ask you. Do we know what day you
19 concluded that the eight prints you have
20 testified here to belonged to Nate
21 Jackson?

22 A. I don't have the exact date that I actually

1 made the identification, no. I will only
2 be able to say that it had to be during
3 the 12-14 to the completion date of 2-13.

4 Q. And when please, did you write your report
5 indicating what your results were?

6 A. My report, I write up a rough draft of my
7 report on the final day of examination.
8 That would have been 2-13-02. My report
9 itself was typed on 3-15-02.

10 Q. And tell us please, who that report is
11 addressed to?

12 A. The report is addressed to Howland Police
13 Department, Detective Sergeant Monroe.

14 Q. So, you don't actually tell Howland Police
15 Department until about four months after
16 the homicide, the middle of March of '02
17 what your results are, right?

18 A. That would have been the date the report had
19 been probably sent to the agency. I
20 can't say for sure whether I would have
21 had a phone conversation and informed him
22 of the identification to that or not.

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1 Most often we do make a phone call to let
2 them know. At this period of time, there
3 was a significant backlog from the time
4 we would complete our report and typists
5 were backlogged until the time the report
6 would be typed. We were notifying
7 agencies. I often did that, but I do not
8 have a record of doing that.

9 Q. Did I hear you say that you finished the
10 analysis in mid February, February 12th?

11 A. February, February 13th.

12 Q. So on 2-13, you finish your analysis?

13 A. Correct.

14 Q. You just said there was a backlog and so the
15 report doesn't get typed until March?

16 A. Until 3-15-02.

17 Q. You may have had some conversation with
18 Howland police authorities, but you can't
19 remember?

20 A. Yes, that is correct.

21 Q. Any conversation would have been between 2-13
22 when you completed your analysis and 3 --

1 whatever when you sent your report out?

2 A. That's correct.

3 Q. But yet, the standards are submitted to you
4 back in December, correct?

5 A. Didn't you say 12-14 and 12-19? 12-19 was
6 Jennifer Robinson. And 12-14 was Mr.
7 Fingerhut and Mr. Jackson.

8 Q. So earlier when you said, "Well, they didn't
9 submit Donna Roberts' samples, known
10 samples back then, because I identified
11 all of the prints," you didn't do that
12 until February, did you?

13 A. The examination was not completed.

14 MR. JUHASZ: Thank you. I
15 appreciate it.

16 REDIRECT EXAMINATION BY MR. BECKER:

17 Q. If you had 25 different people's fingerprints,
18 would it have made any difference in your
19 analysis? Would you have found that, if
20 I gave you, if the Howland Police would
21 have given you 25 different people's
22 fingerprints cards, like Mr. Jackson's,

1 would that have changed your analysis?

2 A. No, it would not. All eight latent prints
3 developed would still be the latent
4 fingerprints and identified to Nate E.
5 Jackson.

6 Q. So you find eight prints that you can use in
7 your analysis?

8 A. Eight fingerprints, correct.

9 Q. One, two, three, four, five, six, seven,
10 eight, and you match all eight of those
11 to who?

12 A. Nate E. Jackson.

13 Q. And you had Jennifer Robinson's, did you match
14 hers to anybody?

15 A. No.

16 Q. Did you find any that were unknown?

17 A. Yes.

18 Q. Where were those found at?

19 A. There was one palm print on B-8 from the
20 latent lifts submitted by Ed Lulla.

21 Q. What is that?

22 A. They are latent lifts submitted from Ed Lulla.

1 Q. And it was found on the latent lifts he had?

2 A. Yes.

3 Q. So one person, one print palm print, you can't
4 identify because you couldn't match it to
5 any of those two?

6 A. I don't have palm prints -- I only had palm
7 prints of the victim and they are not the
8 victim's prints.

9 Q. Did you have palm prints of Nate Jackson?

10 A. No.

11 Q. Do you recall whether you told Howland Police,
12 "I found a palm print," or was that just
13 in your report? Do you recall ever
14 calling them?

15 A. It is in the report to submit ink cards, but I
16 probably would have notified them that
17 there was one remaining unidentified palm
18 print.

19 Q. You weren't given any other palm prints?

20 A. I received no other inked palm prints to
21 compare.

22 Q. Eight prints that you did find all matched one

1 person?

2 A. Yes.

3 MR. BECKER: Thank you.

4 RECROSS EXAMINATION BY MR. JUHASZ:

5 Q. Anybody send any prints to you since all of
6 this, since your report?

7 A. No.

8 Q. So basically, you told them, "I got a palm
9 print here, but I can't identify it,
10 guys," right?

11 A. That is in my report.

12 Q. And I'm going to hang on to it in case you
13 want to send me something.

14 A. It is retained.

15 Q. At least in sending you something, the Howland
16 Police Department did zilch. As far as
17 sending you something else after sending
18 you that report, they did zilch?

19 A. I have received no further standards for
20 examination.

21 MR. BECKER: Nothing further.

22 THE COURT: Ma'am, thank you very

1 much.

2 (SIDE BAR DISCUSSION, OFF THE RECORD AND
3 OUT OF HEARING)

4 THE COURT: The Side Bar for the
5 record was just on housekeeping schedule. Let's
6 take a five minute break, folks. The next witness
7 will take a considerable amount of time. It may go
8 into tomorrow. Remember the admonition given.

9 (Court in recess at 2:25 p.m.)

10 (Resumed in Open Court at 2:45 p.m.)

11 CHIEF PAUL MONROE

12 being duly sworn according to law, on his oath,
13 testified as follows:

14 DIRECT EXAMINATION BY MR. BECKER:

15 Q. Would you tell this Jury your name, please?

16 A. Paul Monroe.

17 Q. Where are you employed at?

18 A. Howland Township Police Department.

19 Q. What is your current title there?

20 A. Chief of Police.

21 Q. I want to direct your attention to December

22 2001. What was your title in December of

1 2001?

2 A. Detective Sergeant.

3 Q. Now, how long have you been employed with the
4 Howland Police Department?

5 A. 17 years.

6 Q. And can you briefly tell us what education and
7 training you have had to prepare you for
8 that position as of December of 2001?

9 A. I graduated from Kent State University with a
10 Bachelor of Science degree. I attended
11 the required police academy. Numerous
12 investigative courses and patrol courses
13 that I have dealt with, burglary
14 investigations, homicide investigations.
15 Sex investigations, robberies. Gambling
16 investigations, narcotics investigations.

17 Q. Now I want to direct your attention to
18 December of 2001 again, and as a
19 Detective Sergeant back then, what would
20 your duties have been?

21 A. On any major crimes that would occur in the
22 Township, either myself or Detective

1 Dillon would be called out to process the
2 scene and investigate the crimes.

3 Q. Now, specifically on December 12, 2001, were
4 you called to a location in Howland
5 Township in reference to a crime?

6 A. Yes.

7 Q. Where was that location at?

8 A. 254 Fonderlac Drive in Howland Township,
9 Warren, Ohio, Trumbull County.

10 Q. Now, I want you to tell this Jury when you
11 first got to that residence, who was
12 present in the residence?

13 A. Patrolman Albert Ray, Patrolman Pollcino.
14 Detective Dillon, Donna Roberts.

15 Q. Were there any emergency management people
16 there or emergency medical personnel
17 there?

18 A. Yes.

19 Q. Do you recall who they would have been?

20 A. Captain Swindler, Paramedic Beck, and I
21 believe there was one other fire
22 personnel there, but I'm not sure who

1 that was.

2 Q. Now, when you get to the scene, where do you
3 go to get into that house?

4 A. The front door.

5 Q. Who were you met by?

6 A. Patrolman Ray.

7 Q. And what did he advise you of?

8 A. Patrolman Ray came outside and spoke with me
9 on the front lawn of the residence, right
10 by the steps. Told me that they had a
11 white male subject, appeared to have been
12 shot in the head. There was a small
13 handgun laying on the step of the garage.
14 Blood around the victim, that the
15 victim's wife, Donna Roberts, was inside
16 the home in the master bedroom and that
17 she had contacted the Trumbull County 911
18 center, and found, actually was the
19 person that found the body.

20 Q. Now, did you have a chance then to go see this
21 Donna Roberts?

22 A. Yes, I did.

1 Q. Where did you first see Donna Roberts at on
2 December 12, 2001?

3 A. She was in the master bedroom of the
4 residence.

5 Q. And what was she doing back there?

6 A. She was standing in the door jamb of the
7 bedroom.

8 Q. Can you describe what her emotional state
9 appeared to you to be?

10 A. When I first saw her, she appeared to have
11 been crying. She wasn't crying when I
12 walked into the room. But you could tell
13 her eyes were puffy. She seemed curious
14 and anxious to find out what was going
15 on. She was asking a lot of questions,
16 and then throughout the conversations I
17 had with her, she would become emotional
18 and start crying and screaming and then
19 she would calm back down.

20 Q. Now, how long did you initially speak to her?

21 A. Just a couple of moments.

22 Q. What did you get from her?

1 A. Basically went over the information that
2 Patrolman Ray had told me, asked her if
3 she could tell me what happened. When
4 she came in, if anything was missing from
5 the house that was noticeable to her. I
6 didn't know how well she had traveled
7 through the house from the time that she
8 arrived. Tried to see if she noticed if
9 there was anything stolen, if anything
10 unusual appeared to be out of place in
11 her opinion, since it was her home.

12 Q. Now, did you eventually go to a location where
13 the victim was?

14 A. Yes, I did.

15 Q. And can you describe what you saw to this Jury
16 when you first saw the victim?

17 A. The victim was laying on his left side. The
18 left side partially on his chest. He
19 wasn't fully laying face down with his
20 right arm extended. There was blood
21 pooling around the victim's torso and
22 head. There was a laceration or some

1 type of cut in the webbing of his hand,
2 his right hand, I believe, not certain if
3 it was the right or left hand, but
4 basically right through here where this
5 muscle and skin was, this was torn, cut
6 open. (Indicating)

7 Q. And did you observe the firearm that you were
8 advised about?

9 A. Yes, I did.

10 Q. And where was that firearm located at?

11 A. The firearm was actually laying in the garage
12 on the first step. There's one step from
13 the garage floor into the residence and
14 it was laying on the floor -- or I'm
15 sorry, on the step.

16 Q. And did you have a first impression of maybe
17 what had happened that night when you
18 first saw that?

19 A. Originally there was talk of this being
20 suicide. Someone there had indicated
21 initially that they thought they had a
22 suicide. The closer we looked, we

1 realized that this was not a suicide.

2 Q. What types of things when you looked closer
3 indicated that perhaps it was not a
4 suicide?

5 A. The victim had been shot more than once. The
6 firearm that was recovered next to the
7 body was fully loaded. It was a Taurus
8 revolver, five shot revolver, and there
9 were five live rounds in it. None of
10 those cartridges had been fired.

11 Q. And was there something missing from the
12 residence?

13 A. Yes.

14 Q. What was missing from the residence?

15 A. The victim's keys and his silver Chrysler.

16 Q. Now, when you first got into that
17 investigation, did you ever determine if
18 the victim had any valuables on his
19 person?

20 A. Yes.

21 Q. And did he?

22 A. Yes.

1 Q. And if he did, what were they?

2 A. He had two wallets in his back pocket with
3 quite a few credit cards. He had cash in
4 his wallets, had gold jewelry on, around
5 his neck, he had rings, watch on.

6 Q. Now, eventually, after you surveyed the scene
7 and discussed this with your other
8 officers, you went back and had a more
9 detailed conversation on December 12th in
10 the early morning hours with Donna
11 Roberts?

12 A. Yes.

13 Q. I want to talk to you about the conversations
14 you had with Miss Roberts on December 12,
15 2001, after your arrival sometime in the
16 early morning hours, the early a.m.

17 A. Yes.

18 Q. Was Miss Roberts able to tell you anything
19 about the car that was missing?

20 A. She told me that it was Robert's car, her
21 husband's, who she refers to as her
22 husband, said that Robert's car is

1 missing. Somebody stole it. Said it was
2 identical car to her car, which is a year
3 older, but it is also a red Chrysler
4 300-M.

5 Q. Was that red Chrysler 300-M at the location?

6 A. Yes, it was.

7 Q. Eventually was that moved for some reason?

8 A. Yes.

9 Q. Was any evidence found under that Chrysler
10 300-M?

11 A. Yes.

12 Q. What evidence was found under the Chrysler
13 300-M?

14 A. A pair of broken glasses. The glasses frame,
15 the eye glass frames were underneath the
16 car. There was a lens missing. It was
17 laying underneath the car as well as
18 blood drops on the floor.

19 Q. Was there any damage inside the interior of
20 the garage?

21 A. Yes.

22 Q. Can you describe that damage?

1 A. On the garage door -- this was a garage door
2 that the sections were about 24 inches
3 tall, and the full width, a double wide
4 garage, and as you opened the garage
5 door, each of those sections folds, and
6 on the lower section, there's a metal bar
7 that kind of supports and keeps the door
8 rigid. There's some carriage bolts that
9 had been knocked out of the garage door,
10 and the metal frame was bent.

11 Q. And I believe those were video taped?

12 A. Yes, they were.

13 Q. As well as the rest of the crime scene?

14 A. Yes.

15 Q. Now, did you get a chance, to ask Miss Roberts
16 about any routines that Mr. Roberts had
17 when he came home?

18 A. Yes.

19 Q. And can you tell this Jury what she told you
20 on December 12, 2001, Mr. Fingerhut's
21 routine was when he came home?

22 A. During that conversation, the routine was just

1 to get off work around nine, shortly
2 after nine, and he would come home and
3 park on the left hand side of the garage.

4 Q. And that garage, when he came in to the actual
5 garage itself, how much room was there to
6 maneuver with both of those vehicles in
7 there or if both of those vehicles would
8 be in there?

9 A. It was very tight.

10 Q. Did she tell you how he would have to get out
11 of his car to get into the house?

12 A. No.

13 Q. When she told you he came home, what did she
14 tell you he would normally do when he
15 came into the house?

16 A. On the 12th?

17 Q. On the 12th, I am still talking about December
18 12, 2001, what did she tell you he did?

19 A. You are talking about the first interview on
20 the 12th?

21 Q. Yes. The very first interview. Did you get
22 into that discussion at that point?

1 A. At that point she just said he came home and
2 parked in the garage on the left hand
3 side.

4 Q. Now, did you discuss with her on the 12th, and
5 this is the early morning hours, what she
6 had done that evening?

7 A. Yes, I did.

8 Q. What did she tell you that she had done, I
9 guess it would be the evening of December
10 11th? What did she tell you she had done
11 and where did she tell you she had gone?

12 A. She had worked at the Warren Greyhound
13 terminal until 5:30, and after work she
14 went to the Red Lobster Restaurant and
15 had a quiet dinner alone, then proceeded
16 home roughly 5:45, 6:00. And during that
17 time, Robert Fingerhut had called her a
18 couple of times, inquired as to what they
19 were going to have for dinner. Told her
20 that things had been slow at the bus
21 terminal in Youngstown throughout the
22 evening, and he would be a little bit

1 late on December 11th and that she should
2 go shopping. Donna told me that he told
3 her to go shopping at the mall and buy
4 herself something nice, because she
5 deserved it. She said that she decided
6 that she didn't want to go to the mall,
7 she was going to go to Wal-Mart instead.
8 She said on her way to Wal-Mart, she left
9 her development, went down East Market
10 Street and stopped at Giant Eagle in
11 Howland, pulled in, made a left hand turn
12 into Giant Eagle from the traffic light,
13 went in, tried to buy rotisserie chicken
14 for the dogs. They didn't have any. She
15 said she parked in the first handicapped
16 space in front of the doors.

17 Q. Did she give you an idea of what time she left
18 her house?

19 A. Yes.

20 Q. What time did she tell you?

21 A. 9:00.

22 Q. And did she tell you -- I didn't mean to

1 interrupt. After she was at Giant
2 Eagle -- what did she do at Giant Eagle
3 when she's trying to get this rotisserie
4 chicken?

5 A. She parked in the first handicapped space,
6 went in and looked for the chicken,
7 didn't have any.

8 Q. And then where did she tell you on December
9 12th, just a few hours after you had been
10 called there, where did she tell you she
11 went then?

12 A. Wal-Mart.

13 Q. And what did she tell you she did at Wal-Mart?

14 A. She said she shopped for a short period of
15 time, about ten minutes, and that she had
16 bought cigarette lighters and make-up.

17 Q. Did she tell you how long she was at Wal-Mart?

18 A. About ten minutes.

19 Q. Now, how long does it take to get from Avalon
20 Estates where she lives there on
21 Fonderlac to Giant Eagle?

22 A. Three minutes.

1 Q. How long then does it take to get from Giant
2 Eagle to the Elm Road Wal-Mart?

3 A. Seven minutes.

4 Q. And she told you she was at Wal-Mart for just
5 five, ten minutes?

6 A. She said about ten minutes.

7 Q. And did she tell you where she went after she
8 left Wal-Mart?

9 A. Yes.

10 Q. Where did she say she went?

11 A. She said she went to Super K-Mart.

12 Q. So we're still before 9:30 at this time, is
13 that correct, using her time table?

14 A. Yes.

15 Q. And how long -- or I take that back. How long
16 does it take to get from the Elm Road
17 Wal-Mart to Super K-Mart in Howland
18 Township?

19 A. 15 minutes tops, probably ten minutes.

20 Q. And that super K-Mart is over by the mall?

21 A. Yes, it is on State Route 46, Niles-Cortland
22 Road.

1 Q. Now, what did she tell you she did, and I am
2 still referring to the December 12th
3 statement in the early a.m. hours. What
4 did she tell you she did at Super K-Mart?

5 A. She said often she just goes to Super K-Mart
6 and walks around and looks at things. On
7 that particular evening, she said she
8 didn't buy anything. She just walked
9 around. I asked her if she spoke with
10 anybody or ran into anybody she knew
11 while she was at Super K-Mart. She said
12 she had not, but she did stop and speak
13 to a lady with a cute child. Shortly
14 before midnight she went home.

15 Q. And did she tell you exactly or approximately
16 what time before midnight she went home?

17 A. Just said shortly before midnight.

18 Q. This is on December 12th in the early morning
19 hours?

20 A. This occurred on December 11th. She's telling
21 me this the early morning hours of the
22 12th.

1 Q. She's telling you this on December 12th, just
2 hours before, hours before what had
3 happened?

4 A. Yes.

5 Q. Did you find anything on December 12th? Now,
6 was there anything there that confirmed
7 what she was telling you?

8 A. Yes.

9 Q. What was in the house on December 12th in the
10 early morning hours that confirmed what
11 she had told you?

12 A. On the kitchen table, it was just past the
13 victim's feet. There was a white
14 shopping bag, plastic shopping bag that
15 had make-up, cigarette lighters and a
16 receipt from Wal-Mart.

17 Q. And I'm going to hand you State's Exhibit 396
18 and ask if you recognize what State's
19 Exhibit 396 is?

20 A. State's Exhibit 396 is the Wal-Mart receipt,
21 which I just testified that we found on
22 the kitchen table at 254 Fonderlac. It

1 is dated December 11, 2001 with the time
2 2137 hours and 18 seconds as the checkout
3 time, and 2137 in military time is
4 actually 9:37 p.m.

5 Q. And that was found in her residence?

6 A. Yes.

7 Q. Now, did you later find some food, I guess,
8 that confirmed another part of her story?

9 A. Well, there was a carcass from a rotisserie
10 chicken laying on the counter.

11 Q. How new or old did that appear to be?

12 A. Don't know.

13 Q. Was there take home containers of food in that
14 residence -- or I'm sorry, in the car?

15 A. Yes.

16 Q. What was in the take out container of the car?

17 A. There were crab legs in a clear plastic tin on
18 the passenger floorboard of the red
19 Chrysler 300-M.

20 Q. Could you tell what -- where the location was
21 that that food had been purchased at?

22 A. No.

1 Q. Did you ever find out where that food had been
2 purchased at?

3 A. Yes.

4 Q. How did you find that out?

5 A. I asked Donna Roberts.

6 Q. And what did she say?

7 A. She told me that she had eaten at Red Lobster.

8 Q. And that was on December 11th, that previous
9 evening?

10 A. Yes.

11 Q. Did she say who she had eaten on December 11th
12 with?

13 A. Yes.

14 Q. Who did she say who she had eaten with?

15 A. She said she was alone.

16 Q. Now, eventually, I think you asked her about
17 when she initially came home to the
18 residence on December 11th?

19 A. Yes.

20 Q. And this is now you are still talking to her
21 in the early morning hours of December
22 12th at her residence. What does she

1 tell you about coming home on December
2 12th?

3 A. On December 11th, she told me as she
4 approached the house, she pushed the
5 garage door opener, the remote control
6 button that was on the visor. After she
7 pushed it, she realized the garage lights
8 came on, and the garage door was actually
9 coming down, so she pushed it again and
10 sent the door back up. Noticed that
11 there were no vehicles in the garage.
12 Pulled into the garage on the right hand
13 side, got out of the car, walked around
14 the back, and went into the house through
15 an open man door. She said the door
16 leading from the garage into the house
17 was standing open, and that Robert
18 Fingerhut was laying there bleeding from
19 the face.

20 Q. And where did she tell you she went after she
21 saw that? What did she tell you she did?

22 A. She said she didn't touch anything, she just

1 ran into the house, grabbed the portable
2 phone and called 911.

3 Q. Did she report that she saw any weapons when
4 she came into her house?

5 A. No.

6 Q. Now while she was in the house calling 911,
7 did she tell you where she went next?

8 A. She said she stood in the house and then
9 thought maybe there was an intruder in
10 the house, so she went and left the house
11 through the front door, and stood out in
12 the front yard and waited there until the
13 police arrived.

14 Q. And was she asked if she saw anyone near the
15 house?

16 A. Yes.

17 Q. And what was her reply?

18 A. No.

19 Q. And was she asked where the Defendant's -- or
20 I'm sorry, strike that. Eventually
21 Dr. Germaniuk came to the residence, is
22 that correct?

1 A. Yes.

2 Q. And were you present when Dr. Germaniuk was
3 there?

4 A. Yes.

5 Q. While you were there with Dr. Germaniuk, what
6 did he do to the body of Robert
7 Fingerhut?

8 A. Dr. Germaniuk took a photograph of the body.
9 Checked the wounds before the body was
10 moved. Then slowly removed the contents
11 of the victim's pocket. Took swabbings
12 from the inside of the victim's pocket,
13 then slowly removed the victim's
14 clothing.

15 Q. Now during the course of Dr. Germaniuk
16 removing the clothing of Mr. Fingerhut,
17 it is State's Exhibit 268, I believe --
18 I'm sorry, 258. If you could look at
19 State's Exhibit 258, which is this
20 tattered bag. Do you recognize what
21 State's Exhibit 258 is?

22 A. Yes.

1 Q. And what is State's Exhibit 258?

2 A. State's Exhibit 258 is a Cincinnati Reds
3 baseball jacket.

4 Q. And do you know where that was recovered from?

5 A. Yes, I do.

6 Q. Where was it recovered from?

7 A. This was recovered from Robert Fingerhut's
8 body in the residence of 254 Fonderlac.

9 MR. INGRAM: I object. Four
10 witnesses have testified that that is where this
11 jacket came from already. This is cumulative and I
12 respectfully submit a waste of our time.

13 THE COURT: The detective has
14 identified it and it has been proven where it was
15 found.

16 Q. Now, Detective, can you describe for this Jury
17 the injuries that you observed on Mr.
18 Fingerhut at the scene?

19 A. A bullet wound to the top of his skull. A
20 bullet wound to his chest. Another
21 bullet wound to his back. I was going to
22 show you, to give you the proximity of

1 where the bullet came out, it hit up kind
2 of high, and then we see this little
3 fray. It is an exit wound for the
4 bullet.

5 MR. INGRAM: I object. He's not
6 qualified to say what is an exit wound in that
7 jacket.

8 THE COURT: I think he's qualified
9 to say that it appears --

10 MR. INGRAM: To be a hole.

11 Q. I'll --

12 THE COURT: Let me inform the Jury
13 as to the angle of the bullet where it came in,
14 went out, that is something that an expert would
15 have to testify to. The Detective has given you
16 what he thinks appears to be the entrance and exit
17 wound of the bullet.

18 Q. I'm going to hand you State's Exhibit 259. Do
19 you recognize what State's Exhibit 259
20 is?

21 A. State's Exhibit 259 is a spent bullet, which
22 was found trapped between the layers of

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1 clothing in the front of Robert
2 Fingerhut.

3 Q. And did you gather up that Exhibit?

4 A. Yes.

5 Q. And you put it in that container?

6 A. Yes.

7 Q. And it is in the same condition as when you
8 first got it there at the scene?

9 A. Yes.

10 Q. During the course of your investigation, did
11 you find any bullet holes in the
12 residence?

13 A. Yes.

14 Q. Can you describe for this Jury where the
15 bullet holes were located at?

16 A. When you walk into the kitchen from the
17 garage, if you would just continue to
18 walk straight through the house, there's
19 a set of basement steps that go down, and
20 in the dry wall ceiling, that is at an
21 angle going down the steps, towards the
22 bottom portion of that dry wall close to

1 the basement ceiling, there was an oblong
2 hole in the drywall. We removed part of
3 the drywall and found a bullet, spent
4 bullet behind that.

5 Q. Now, I'm going to hand you State's Exhibit 257
6 and ask if you recognize number 257?

7 A. Yes.

8 Q. And what is 257?

9 A. State's Exhibit 257 is a partially damaged
10 spent bullet. There's some white
11 substance on the bullet. This is the
12 bullet that I described that we found
13 behind the drywall where the oblong hole
14 in the wall was.

15 Q. And go ahead and take those gloves off. As
16 you and your fellow officers were
17 conducting your examination, finding
18 these bullets, getting the clothing,
19 gathering evidence, what was this
20 Defendant doing?

21 A. She was still in the bedroom of the residence.

22 Q. And could you hear what she was doing?

1 A. At times, the victim was crying, screaming,
2 "Oh, my Robert, my Robert," very loudly.
3 Other times, she was very quiet.

4 Q. Go ahead.

5 A. Sometimes while we were processing different
6 parts of the crime scene, it would become
7 quiet and there wasn't much conversation
8 between the other policemen. It seemed
9 like during those periods of times that
10 we would hear Donna Roberts in the
11 bedroom screaming and crying. When we
12 would begin talking, Detective Dillon
13 noticed that --

14 MR. INGRAM: Objection to what
15 Detective Dillon noticed.

16 THE COURT: Sustained.

17 Q. What did you notice?

18 A. I noticed that when we were discussing some of
19 the findings and things that we had seen
20 within the home, Donna Roberts had become
21 quiet and we didn't hear her any longer
22 as long as we were talking.

1 Q. Now, eventually -- well, let me ask you this.

2 Were there any animals in that house?

3 A. Yes.

4 Q. Where were they at?

5 A. They were underneath the bed in the master
6 bedroom.

7 Q. Is that where they remained throughout the
8 evening?

9 A. Yes, they did.

10 Q. At some point, a decision was made to have
11 Miss Roberts leave the residence?

12 A. Yes.

13 Q. And how did that come about?

14 A. We realized we were going to be inside this
15 home for a substantial number of hours
16 collecting evidence. And that it would
17 probably be best for Donna Roberts to
18 have somebody come sit with her or leave
19 the residence, a neighbor or family
20 member. I spoke to Donna Roberts and
21 asked if there was someone we could call
22 to have come over with her or that she

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1 could go to their residence. She gave me
2 the phone number of her brother.

3 Q. And in fact, did she leave the residence with
4 her brother?

5 A. Yes.

6 Q. And approximately what time was that, if you
7 recall?

8 A. I don't know.

9 Q. But she did leave?

10 A. Yes.

11 Q. And your investigation was not completed yet?

12 A. No, it was not.

13 Q. After she left, or as she left, did she say
14 anything to you about what needed to be
15 done?

16 A. She told me to do whatever had to be done,
17 search the entire house if we had to,
18 just find whoever did this.

19 Q. Now she leaves the residence, correct?

20 A. Yes.

21 Q. And at some point during your search, did you
22 search her vehicle?

1 A. Yes.

2 Q. What did you find in her vehicle?

3 A. In the trunk of the vehicle, found a brown
4 paper shopping bag that contained
5 clothing and the name Nate Jackson upon
6 it and 145 letters that were written by
7 Donna Roberts to Nate Jackson.

8 Q. I'm going to show you State's Exhibit 270 and
9 ask if you recognize that, what State's
10 Exhibit 270 is?

11 A. The brown shopping bag that I described that
12 says Nate Jackson, this is the bag that
13 we found inside the trunk of Donna
14 Roberts' vehicle.

15 Q. And did you say there was something else in
16 that bag?

17 A. Yes, there were some paperwork from the
18 prison, release papers, some socks.
19 There were 145 handwritten letters from
20 Donna Roberts to Nate Jackson.

21 Q. I'm going to hand you State's Exhibits 271-D
22 one through -- State's Exhibit 271-D 139

1 and D-139-A, and ask if you recognize
2 what those are?

3 MR. INGRAM: I'll stipulate that
4 those are the letters that were in the bag.

5 MR. BECKER: Thank you.

6 Q. Those letters, they were in this bag, is that
7 correct?

8 A. Yes, the letters were actually folded in each
9 of these envelopes, each one had an
10 envelope.

11 Q. And on December 12, 2001, did you have a
12 chance to read those letters?

13 A. Not all of them.

14 Q. Did you read any of them?

15 A. Yes.

16 Q. How many would you proximate?

17 A. About five.

18 Q. Now, while you are there at the residence, you
19 conduct your search, you gather the
20 evidence you need, and you leave. Do you
21 remember what time you left?

22 A. Approximately 6:30 a.m.

1 Q. And while you were there doing your job, doing
2 your work, doing whatever it is to catch
3 this person as she asked you, did someone
4 call the residence?

5 A. Yes.

6 Q. And tell this Jury about the phone call you
7 got.

8 A. 3:38 a.m., I was sitting in the dining room
9 writing down an inventory, filling out an
10 inventory form of items that were to be
11 removed. I answered the phone, said
12 hello. There was a pause, a quiet.
13 Nobody said anything and they hung the
14 phone up. So I hit the button, star 57
15 on the phone, which causes the phone
16 company to automatically do a trace on
17 the incoming call. I received a recorded
18 message that indicated the successful
19 trace had been conducted on the last
20 call. I hung the phone up, then I hit
21 star 69, which indicated the number that
22 that call had just came from.

1 Q. Do you recall the number that you got?

2 A. It was area code 330/056-0371, but I would
3 have to refer to my notes to be exact.

4 Q. If you want to refer to your notes, do you
5 have them with you here?

6 A. Yes.

7 Q. Are they in the binder that Detective Dillon
8 has?

9 A. Yes.

10 Q. Would that help you refresh your memory of
11 what that phone number was?

12 A. Yes. The phone number was 330/506-0373.

13 Q. And now you go home after you finish your
14 search at 6:30 in the morning. You go
15 home, and what do you do at home, you
16 probably sleep?

17 A. I slept for about three hours.

18 Q. Did you ever see Donna Roberts again on that
19 same date, December 12th?

20 A. Yes.

21 Q. How did that come about?

22 A. Around 10:00 in the morning, I went back to

1 where Donna Roberts was staying in
2 Austintown. Spoke with her there, and
3 she gave us a written consent to continue
4 searching the residence.

5 Q. And did you make arrangements to meet with her
6 and speak with her again?

7 A. Yes.

8 Q. And where were you to meet with her and speak
9 with her again?

10 A. At the Howland Police Department at 1:00 in
11 the afternoon.

12 Q. Did you go back to the house between 10:00 and
13 1:00?

14 A. No.

15 Q. When you got to the house at 1:00 p.m. -- I'm
16 sorry, when you got to your office at
17 1:00 p.m., did she show up?

18 A. Yes.

19 Q. And this is at the Howland Police Department,
20 is that correct?

21 A. Yes.

22 Q. So, now you are at the Howland Police

1 Department, and you question this
2 Defendant again about her relationship
3 with Mr. Robert Fingerhut, is that
4 correct?

5 A. Yes.

6 Q. Did she tell you how she met Robert Fingerhut?

7 A. I don't recall.

8 Q. Did she tell you how long they had been
9 married?

10 A. They were married for three years.

11 Q. And did she tell you how long she had been
12 with him?

13 A. Since 1983.

14 Q. Did she tell you where they had met at?

15 A. I don't know.

16 Q. And did she tell you a lot of details about
17 what she did when she met Mr. Fingerhut?

18 A. Yes.

19 Q. What kind of work did she tell you she did
20 when she met Mr. Fingerhut?

21 A. She worked for a plastic surgeon in North
22 Miami Beach, Florida.

1 Q. Did she tell you what she did with this
2 particular doctor?

3 A. Yes.

4 Q. Did she tell you his name?

5 A. Yes.

6 Q. What did she tell you she had done with this
7 doctor, what type of work she had done?

8 A. She worked for Dr. Mort Freeman. He's a
9 plastic surgeon and she was his only
10 employee. Said she did his medical
11 records, his billing, filed medical
12 reports, insurance forms. She assisted
13 him in surgical proceedings, assisted him
14 with skin grafts and just basic
15 proceedings that he had done.

16 Q. Did she tell you that she had ever traveled
17 with this doctor?

18 A. Yes.

19 Q. Where did she tell you she had traveled with
20 this doctor to?

21 A. Israel.

22 Q. What did she do in Israel with this doctor?

1 A. Dr. Freeman would do, would handle repair work
2 to gunshot wounds and skin grafts, and
3 she indicated to me that she had actually
4 performed skin grafts on persons who had,
5 who were in need of these because the
6 services were so limited in Israel, and
7 she also assisted in dressing fresh
8 gunshot wounds from battle. She referred
9 to them as battle wounds.

10 Q. On December 12th at 1:00 p.m. when you are
11 meeting with her, what did she tell you
12 her marital status was with Robert
13 Fingerhut?

14 A. She said she was married.

15 Q. Does she tell you anything about divorcing Mr.
16 Fingerhut?

17 A. She said in the eyes of the law, she was
18 divorced from Robert Fingerhut, that she
19 was divorced from him because of
20 financial reasons, and business reasons
21 that her husband Robert wanted to be
22 divorced in case there would be a lawsuit

1 at the bus terminal or the collapse of
2 the business, it wouldn't affect the
3 finances. But in her mind, because they
4 were a devout Jewish family, that in the
5 eyes of their religion, they were not
6 divorced and the only way they could
7 become divorced would be to get a GET,
8 which you would need to get that from a
9 higher ranking official in the Jewish
10 church.

11 Q. Now how did she describe on December 12, 2001,
12 her relationship at 1:00 in the
13 afternoon, her relationship with Mr.
14 Fingerhut?

15 A. Said they got along great and had no real
16 problems.

17 Q. Did she report to you any physical abuse?

18 A. No.

19 Q. Did she report to you any problems they were
20 having?

21 A. No. She said the only problems they ever had
22 was over who was going to put water in

1 the dog's bowl.

2 Q. Did she tell you about some firearms that she
3 owned and Mr. Fingerhut owned?

4 A. Yes.

5 Q. And eventually, not on the 12th, but later on,
6 did you conduct anything, get some serial
7 numbers or do anything with those serial
8 numbers?

9 A. Yes.

10 Q. What did you do when you got the serial
11 numbers for those guns?

12 A. I contacted ATF and submitted a request for a
13 weapons trace with ATF.

14 Q. And what weapons did she tell you she had on
15 December 12, 2001 or how many?

16 A. There was a long rifle with a bayonet on it,
17 and two hand guns.

18 Q. Now, I'm going to show you what is marked for
19 purposes of identification as State's
20 Exhibit 327-A, 327-B and 327-C. I'm
21 going to hand you State's Exhibits 327,
22 A, B and C and ask if you recognize

1 those?

2 A. Yes.

3 Q. What are those?

4 A. 327-A is a certification letter from the
5 Department of Treasury, Bureau of
6 Alcohol, Tobacco and Firearms, which
7 directly addresses State's Exhibit 327-B
8 and State's Exhibit 327-C, which are
9 actually firearms traces, which were
10 conducted by the Department of the
11 Treasury, Bureau of Alcohol, Tobacco and
12 Firearms to determine ownership of two
13 firearms.

14 Q. Both of those firearms, what make and model
15 were they?

16 A. 327-B is a Taurus model 85, .38 caliber,
17 serial number IL-46854. Indicates the
18 owner of this firearm is Donna Roberts,
19 and she purchased it March 26, 1990. The
20 second is a Taurus, doesn't list a model
21 number, .38 caliber revolver, serial
22 number JH-14188. Purchased October 24,

1 1990 by Robert Steven Fingerhut.

2 Q. Now, those firearms, were they will both
3 recovered in connection with this case?

4 A. No, they were not.

5 Q. One of those was missing?

6 A. Yes.

7 Q. And has it ever been recovered as of this
8 date?

9 A. No.

10 Q. Now, I want to go back and I hate to do this
11 to you, and I'm going to go back to when
12 you were at the house on the 11th. Did
13 you find some other letters in the
14 residence?

15 A. Yes.

16 Q. And who were those letters addressed from and
17 who were they addressed to?

18 A. They were addressed from Nate Jackson and they
19 were addressed to Donna Roberts.

20 Q. And I'm going to assume that State's Exhibits
21 273-N one and 273-N 143 would be
22 stipulated to as the previous ones were.

1 MR. INGRAM: Yes.

2 THE COURT: So stipulated.

3 Q. There's also an additional letter that was
4 found in the master bedroom inside an
5 armoire marked as 275-A.

6 MR. INGRAM: Can I see that?

7 MR. BECKER: Is that stipulated to
8 that that is Mr. Jackson's letter?

9 MR. INGRAM: Yes.

10 Q. Going back to the house, when you were in the
11 residence, did you search the bedroom?

12 A. Yes.

13 Q. In the bedroom, did you find some paperwork?

14 A. Yes.

15 Q. Where did you find this paperwork and what
16 kind of paperwork was it?

17 A. Besides the letters?

18 Q. Yes, besides the letters.

19 A. In the headboard of the bed, the master
20 bedroom, a little cabinet and you opened
21 it up and there was a stack of papers in
22 there. On the very top were two life

1 insurance policies.

2 Q. I'm going to hand you State's Exhibits 322 and
3 323 and ask if these are the insurance
4 policies that you found in the bedroom?

5 MR. INGRAM: Stipulated.

6 MR. BECKER: Those are stipulated
7 to.

8 Q. Where were they in relationship to all of the
9 other stacks of things in that room?

10 A. They were on the top.

11 Q. Now, I want to go back to December 12th at
12 1:00 p.m. at your office. Did the
13 Defendant give you a version of the
14 events of December 11th starting from
15 when she got up that morning?

16 A. Yes.

17 Q. What did she tell you was the last time she
18 saw Robert Fingerhut on December 11th?

19 A. While she was laying in bed.

20 Q. And what did she tell you that she -- well,
21 what did she tell you that Robert went to
22 in the morning -- where did she tell you

1 he went?

2 A. He would go to the Warren Greyhound terminal.

3 Q. And then where would she go in the day?

4 A. The daytime, she said she woke up around 8:00,

5 Robert Fingerhut was leaving for work.

6 They exchanged greetings and he went on

7 his way. Said she laid in bed until 9:30

8 or 10:00, got up, washed her hair, fixed

9 her make-up, fed her dogs, and at 12:30

10 she went to work at Warren Greyhound

11 station and worked there alone until

12 5:30.

13 Q. What did she tell you on this date that you

14 are now talking to her at 1:00 p.m. on

15 December 12th, what did she tell you

16 about going -- or I'm sorry, what did she

17 tell you about why she didn't go to the

18 Youngstown terminal?

19 A. The Youngstown terminal is computerized and

20 she doesn't know how to use the equipment

21 there, that is why she doesn't work in

22 the Youngstown terminal.

1 Q. When the Defendant was telling you she went to
2 the Warren bus station, what did she tell
3 you about Nate Jackson?

4 A. She didn't tell me anything about Nate
5 Jackson.

6 Q. And she continued to tell you what she did
7 when she left work on December 11th from
8 the Warren terminal?

9 A. Yes.

10 Q. What did she tell you she did when she left
11 work at the Warren terminal about 5:15?

12 A. She said she worked there until 5:15, she
13 called out to the Youngstown terminal,
14 talked to Robert. She went to Giant
15 Eagle and purchased a rotisserie chicken.
16 That is what she typically feeds her
17 dogs.

18 Q. This was the same type of rotisserie chicken
19 that she told you the night before or
20 earlier in the morning she had gone out
21 at 9:00 for?

22 A. Yes.

1 Q. Now she's saying it was what time when she
2 went to buy the rotisserie chicken after
3 work?

4 A. About 5:30.

5 Q. Now, did she tell you where she had dinner
6 that night?

7 MR. INGRAM: May we please approach
8 Side Bar?

9 THE COURT: Yes.

10 (SIDE BAR DISCUSSION, OFF THE RECORD AND
11 OUT OF HEARING)

12 Q. Detective, may I have the -- Detective, I want
13 to direct your attention to December 12th
14 again, and you are speaking to her at the
15 Howland Police Department. On December
16 12th, she tells you that she went to get
17 this rotisserie chicken from Giant Eagle.
18 Where did she tell you she went to dinner
19 that night?

20 A. She said she got the chicken at the Giant
21 Eagle. She said that she had dinner at
22 the Red Lobster.

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1 Q. And what did she tell you about having dinner
2 with Nate Jackson on December 12th?

3 A. She did not.

4 Q. And when she went home then, she then told you
5 again the more detailed version of the
6 events that led up to her going to
7 Wal-Mart and all of these other stores.
8 Did she tell you the same story or what?

9 A. Yes.

10 Q. Now, again, when she tells you this story, was
11 she a little bit more accurate of what
12 time she left Super K-Mart which was the
13 last place she went to in that version of
14 events, correct?

15 A. On that occasion, she said 10:30 she arrived
16 at Super K-Mart.

17 Q. Did she tell you how long she was at Super
18 K-Mart?

19 A. She said about an hour.

20 Q. Now, on either of these dates, December
21 12th -- well, actually it is the same
22 date, but once in the early morning

1 hours, in the morning at the house and
2 again at Howland Township at the police
3 department on December 12th, did she tell
4 you why she went to the Days Inn in
5 Boardman?

6 A. She didn't tell me that.

7 Q. Neither one of those times you spoke to her on
8 December 12th?

9 A. She never mentioned the Days Inn on December
10 12th.

11 Q. On December 12th, did she tell you about the
12 people she was married to in the past?

13 A. Yes.

14 Q. What did she tell you about the people she was
15 married to in the past?

16 A. She told me the names of both of her previous
17 husbands prior to Robert.

18 Q. Did she tell you how long she had been married
19 to them?

20 A. Yes.

21 Q. Did she tell you about Robert and the kind of
22 work he did in Florida?

1 A. Yes.

2 Q. And what did she tell you about Robert having
3 a gun when he was in Florida?

4 A. She said he had a private investigator's
5 license and permit to carry a firearm.

6 Q. What did she tell you about moving back to
7 Ohio?

8 A. She told me when they moved back and where
9 they moved to.

10 Q. What did she tell you about some type of
11 lawsuit she was involved in?

12 A. She named an officer, she wasn't sure whether
13 it was with Youngstown Police Department
14 or Mahoning County Sheriff's Department,
15 other than he wore a black uniform and
16 she believed his name was Bettencough.

17 Q. What did she tell you about that lawsuit?

18 A. Told me she filed a lawsuit against him and
19 that it had been dismissed and it was
20 currently under appeal and her attorney
21 was Steve Chuparkoff.

22 Q. And did she start to talk to you about some

1 potential suspects?

2 A. Yes.

3 Q. Do you recall who some of those suspects were?

4 A. She said that a lot of these crazy people come
5 into the bus terminal especially in
6 Youngstown. People come in and would
7 make threats towards Robert.

8 Q. What names did she have for you?

9 A. As far as the crazy people and the persons
10 that come in and made the threats, she
11 didn't have any actual names.

12 Q. Now, what did she indicate to you about
13 Robert?

14 A. She told me that there's something you don't
15 know about Robert, that he goes both ways
16 and he has a friend named Bobby.

17 Q. And what did she tell you about Bobby?

18 A. She said that Robert met him at the Avalon Inn
19 in Howland, but she really doesn't know
20 who Bobby is and she's never met Bobby.

21 Q. Would Bobby call her residence, if you
22 remember?

1 A. Donna said that they would call Bobby and
2 Robert would talk on the phone.

3 Q. And what did she tell you about Robert
4 Fingerhut's behavior prior to his death?

5 A. She said a week, week and a half prior to his
6 death that Robert was acting kind of
7 nutty and that she thought it was because
8 of his relationship with this Bobby.

9 Q. What did she tell you about a Hispanic man
10 named Carlos?

11 A. She said that she had been having a
12 relationship with Carlos for sexual
13 purposes only. They weren't in love.
14 She was just having sex with him. This
15 relationship lasted six months.

16 Q. And what did she tell you about a guy named
17 Santiago?

18 A. That he was her, kind of a friend, and she was
19 trying to help him out and that he had
20 stolen some money and a gun from her.

21 Q. One of those guns that was in the ATF report?

22 A. No.

1 Q. A different gun?

2 A. A different gun.

3 Q. And how did she describe to you the sexual
4 things that she had or these boyfriends
5 while she was in this relationship with
6 Mr. Roberts? How did she explain that
7 relationship and his knowledge of those?

8 A. She said that her and Robert were just kind of
9 a cool couple and that Robert did his
10 thing, she did hers, and that it is kind
11 of a game, and as long as they didn't say
12 "I love you" to the other person,
13 everything was okay. And out of respect
14 for Robert, she wouldn't bring people to
15 the house, and Robert wouldn't bring his
16 friends to the house, either.

17 Q. Now on December 12, 2001, you have all of
18 these letters, you have Mr. Fingerhut
19 dead, she's giving you all of these
20 names. Tell this Jury how the name Nate
21 Jackson comes up in the conversation with
22 this Defendant.

1 A. I asked Donna if she had relationships with
2 anybody else that she could recall. She
3 said, "No, there's nobody else. I told
4 you everybody." I said, "What about a
5 guy by the name of Nate Jackson?" She
6 says, "Yes, I forgot about him." I said,
7 "Well, who is Nate Jackson?" She said,
8 "I have been dating him for about two
9 years. He calls me from prison and he
10 writes me quite often and I write him."

11 Q. And did she tell you when the last time she
12 saw Nate Jackson was?

13 A. She said she actually saw Nate Jackson on
14 December 9th.

15 Q. Which would have been Sunday?

16 A. Yes.

17 Q. And did she tell you under what circumstances
18 she came to see Nate Jackson on December
19 9th?

20 A. She said she saw Nate Jackson as a friend and
21 as a favor to him, she went to the Lorain
22 Correctional Institution, picked him up

1 and gave him a ride back to Youngstown
2 where she dropped him off at a house on
3 Wirt Street occupied by the persons known
4 to her only as Oscar and Sheila.

5 Q. And did she say she had spoken to Mr. Nate
6 Jackson at all since December 9th?

7 A. Yes.

8 Q. And what did she tell you about speaking to
9 Mr. Nate Jackson?

10 A. She said she spoke to him last on the
11 telephone, not in person, on December
12 11th in the morning hours. He called her
13 from a pay phone.

14 Q. And did she tell you what that conversation
15 was about?

16 A. (No response.)

17 Q. Did you also ask her about Mr. Fingerhut's
18 knowledge of her relationship with
19 Mr. Jackson?

20 A. Yes.

21 Q. And what was her response to that?

22 A. That Nate Jackson and Robert Fingerhut were

1 friends.

2 Q. And did she tell you if Robert Fingerhut was
3 jealous of Nate or vice versa?

4 A. She said they both got along and there were no
5 problems between the two of them.

6 Q. Now, on December 12, 2001, did you have a
7 chance to discuss with Miss Roberts this
8 phone call that came to you while you
9 were at the residence at 3:30 in the
10 morning?

11 A. Yes.

12 Q. I want to ask you did you ask her anything
13 about a cell phone?

14 A. Yes.

15 Q. And tell this Jury what you asked Miss Roberts
16 about the cell phone or where it was?

17 A. I asked her if she had a portable cell phone
18 and she said she did. I asked her where
19 it was at, and she said it was in her
20 purse. I said, "May I look at it?" She
21 said, "Certainly." The purse was on the
22 floor, she reached down and fumbled

1 through her purse a little bit and said,
2 "I left it at home. It's on the kitchen
3 counter." I said, "Okay." And I said,
4 "It's funny that on the night that we
5 were at your house at 3:38 in the
6 morning, that cell phone called back to
7 the crime scene and I answered the phone
8 and I talked to a black male gentleman on
9 the phone briefly." I said -- I asked
10 her who that was, if she knew anything
11 about it. She said, "Nate must have had
12 the phone. He's always borrowing it."

13 Q. Now, on that date, did she tell you -- I am
14 talking about December 12th, this 1:00
15 p.m. conversation you are having, did she
16 tell you where her and Mr. Jackson were,
17 what was going on with their
18 relationship?

19 A. Said there was no relationship any longer,
20 they were just friends.

21 Q. And why was there no longer a relationship
22 according to her?

1 A. Said she didn't want it. She just wanted to
2 be friends with him and that was it.

3 Q. Now, what did she tell you about spending the
4 night at the Wagon Wheel? I am referring
5 to December 12th -- at the Wagon Wheel in
6 Boardman on December 9th with
7 Mr. Jackson?

8 A. She didn't tell me that.

9 Q. You asked her about some telephone numbers
10 that she had, is that correct?

11 A. Yes.

12 Q. You asked her for the phone numbers for the
13 cellular phones, but they are actually
14 mounted in the cars, is that correct?

15 A. In each of the Chryslers, there were fixed
16 mounted telephones in the cars.

17 Q. She gave you those numbers?

18 A. Yes.

19 Q. And she also gave you her cell phone number?

20 A. Yes.

21 Q. Now on December 12, 2001, at about 1:00 p.m.,
22 do you recall how that conversation with

1 this Defendant ended?

2 A. We started talking about the cell phone and
3 why this unknown black male called the
4 house at 3:00 in the morning or about
5 3:38 in the morning and she told me that
6 it must be Nate Jackson. She put her
7 head down on the table and folded her
8 arms and said she was too tired to
9 continue talking, and we ceased the
10 interview at that point.

11 Q. And she went home?

12 A. Yes.

13 Q. Now, on December 13th, there was a vehicle
14 recovered, is that correct?

15 A. No.

16 Q. I'm sorry, that was on December 12th. On
17 December 12th. Where was that vehicle
18 recovered at?

19 A. The corner of Pershing and Victoria in
20 Youngstown, Ohio.

21 Q. What vehicle did that ultimately be?

22 A. The silver 300-M that Donna Roberts told us

1 was Robert Fingerhut's car.

2 Q. What did you observe in that vehicle, in the
3 interior of that vehicle?

4 A. Keys were in the ignition, there was blood on
5 the -- those large key chains in the
6 ignition, had an assortment of keys and
7 little gym bags and multiple key chains
8 upon it. There was blood all over that.
9 There was blood on the door rest on the
0 passenger side, the driver's side of the
1 car, underneath the dash, on the visors,
2 above the fold down visors for the sun.

13 Q. Now, I want to direct your attention back to
14 the conversations you had on the 12th
15 with Miss Roberts at 1:00 p.m. when you
16 were at Howland. How much life
17 insurance -- how much life insurance did
18 she tell you will she had between her and
19 Mr. Fingerhut?

20	A.	\$300,000.
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21 Q. Eventually, then you continue your
22 investigation and there were a number of

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1 people that were contacted in the next
2 few days, is that correct?

3 | A. Yes.

4 Q. Evidence was obtained and taken to BCI?

5 A. Yes.

6 Q. A lot of that would have been done by you?

7 A. Yes.

8 Q. I am assuming you don't have any objection to
9 the chain of custody or any of those
10 issues, so we won't cover those, correct?

11 MR. INGRAM: I don't think so.

12 Q. Now on December 14th, I'm sorry, December 15th
13 of 2001, which I believe was a Saturday,
14 you had a chance to meet with Miss
15 Roberts again, is that correct?

16 | A. Yes.

17 Q. Explain to this Jury how you met with her on
18 December 15, 2001?

19 A. I received a page in the afternoon to call our
20 911 center. I called in and they said
21 that Attorney Steve Chuparkoff has been
22 trying to get ahold of me and would like

1 me to call him back at his office in
2 Canfield. And there's a Donna Roberts in
3 his office that would like to speak with
4 me. I called him back, Mr. Chuparkoff
5 said his client would like to talk to me
6 and made arrangements for him to meet me
7 at the Howland Police Department.

8 Q. And in fact did she come and meet with you?

9 A. Yes.

10 Q. Now, on December 15, 2001, you had a chance to
11 read more of those letters?

12 A. Yes.

13 Q. Had you had a chance to receive any phone
14 calls that had been made by Miss Roberts?

15 A. It was the following week.

16 Q. And having read some of those letters, you
17 have actually taken notes from those
18 letters, is that correct?

19 A. Yes, I have.

20 Q. You have created quite an extensive bit of
21 notes?

22 A. Yes.

1 Q. From you personally reading those letters?

2 A. Yes.

3 Q. When she came in with her attorney on December
4 15, 2001, what was the conversation like
5 on that day? And I want to start out
6 with specifically, what did she offer to
7 you -- strike that. What did she tell
8 you in terms of her relationship now with
9 Mr. Jackson?

10 A. At this point --

11 MR. INGRAM: I object. May we
12 approach Side Bar, please?

13 (SIDE BAR DISCUSSION, OFF THE RECORD AND
14 OUT OF HEARING)

15 Q. I want to direct your attention to December
16 15, 2001. There was a tape recorded
17 conversation between you and
18 Mrs. Roberts, the Defendant in this case
19 on that date, with her attorney present,
20 correct?

21 A. Correct.

22 Q. Now, during that conversation, and in fact,

1 with all of your conversations with her,
2 the two on the 12th and now on the 15th,
3 tell this Jury how forthcoming she was
4 with information.

5 A. She was not.

6 Q. How would you describe her giving you
7 information?

8 A. Uncooperative.

9 Q. How would she give you information when you
10 confronted her with additional
11 information?

12 A. She would give us partial information, to dig
13 a little bit, say for example, the
14 conversation in the afternoon on the 12th
15 with Donna Roberts, he asked her if she
16 had relationships with any other men
17 other than the one she already told me,
18 and she said no. And I bring up Nate
19 Jackson and then all of a sudden, she
20 remembers Nate Jackson. With a little
21 prodding, she started telling me more,
22 but without digging into it, she wasn't

1 going to tell me anything.

2 Q. On December 15th when you had spoken to her,
3 you had a chance to read some of those
4 letters and I think you have testified
5 to, correct?

6 A. Yes.

7 Q. And on December 15th, how would you
8 characterize Nate Jackson in terms of
9 your investigation?

10 A. He was our prime suspect.

11 Q. When you spoke to Miss Roberts on December 15,
12 2001, did you discuss with the Defendant
13 perhaps trying to get in contact with
14 Nate Jackson?

15 A. Yes.

16 Q. And what did you do in preparation for doing
17 that?

18 A. Prepared a list of questions for her.

19 Q. And then where did you go for her to make
20 contact with Mr. Jackson?

21 A. Donna Roberts agreed that she wanted to
22 cooperate and help the police catch

1 whoever had done this. I discussed with
2 her my beliefs that it was probably Nate
3 Jackson, that I wanted her to make a
4 telephone -- have a telephone
5 conversation with him. And to call him,
6 we would record the conversation. We
7 went to 254 Fonderlac in case they would
8 have caller I.D. that probably wouldn't
9 look too good if she's calling from the
10 police station and asking a lot of
11 questions about her husband.

12 Q. And did in fact she attempt to make a call to
13 Mr. Nate Jackson that night?

14 A. Yes, she did.

15 Q. And was she successful?

16 A. No.

17 Q. Now the next day which was Sunday, December
18 16th, did you attempt to do the same
19 thing?

20 A. Yes.

21 Q. And was she present with her attorney again?

22 A. Yes.

1 Q. And you were making these calls again from her
2 residence?

3 A. Yes.

4 Q. And can you tell -- and she had the same list
5 of questions for her to ask?

6 A. Yes.

7 Q. Did she make contact with Nate Jackson or did
8 he make contact with her that night?

9 A. She made contact with Nate Jackson's sister,
10 Tausha Corrigan in Youngstown. Tausha
11 told her to -- asked her what number she
12 was at and said she could see if she
13 could get ahold of Nate Jackson. A short
14 time later, the phone rang at the
15 residence and she spoke to Nate Jackson
16 on the phone.

17 Q. And was this call being recorded?

18 A. Yes, it was.

19 Q. By who?

20 A. By me.

21 Q. And how well of a job did she do asking the
22 questions that you had prepared for her?

1 A. She did not.

2 Q. What did you do when she wasn't asking the
3 questions that you had asked her to ask
4 Mr. Jackson?

5 A. The questions were written down and they were
6 large enough for her to read and I would
7 get right next to her and I would point
8 to this question and she would roll her
9 eyes and kind of smirk at me and
10 continued the conversation and never did
11 ask the questions that we asked her to
12 ask.

13 Q. Now, did she ever tell you during these
14 conversations on December 12th at the
15 residence, December 12th at the Howland
16 Police Department, and December 15th and
17 December 16th, either at the Howland
18 Police or her house, about letters and
19 the contents of those letters that she
20 had written between her and Mr. Jackson?

21 A. On December 12th?

22 Q. Yes, on the 12th.

1 A. No.

2 Q. Now on the 15th?

3 A. Yes.

4 Q. And that is when she knew you had the letters?

5 A. Yes.

6 Q. And how did she characterize those letters,
7 the contents of those letters?

8 A. Said it was just prison talk and she was
9 telling Nate Jackson what he wanted to
10 hear.

11 Q. Eventually this investigation led you to the
12 Days Inn in Boardman Ohio, is that
13 correct?

14 A. Yes.

15 Q. And you went to that residence -- I'm sorry,
16 you went to that location and obtained
17 some physical evidence, is that correct?

18 A. Yes.

19 Q. Tell this Jury what evidence you have got and
20 how you got it.

21 A. Myself and Detective Dillon went to the Days
22 Inn. It was a Sunday, in the afternoon,

1 about 3:00. We spoke with the desk clerk
2 there who indicated that in fact there
3 was a Nate Jackson that -- I'm sorry,
4 room 129 at the Days Inn was rented out
5 to Donna Roberts. And we were able to
6 obtain receipts from the Days Inn with
7 Donna Roberts' name upon it.

8 Q. And did you then go to the room that had been
9 rented in her name?

10 A. Yes.

11 Q. And did you find any physical evidence either
12 in the room or at that location?

13 A. Yes.

14 Q. Where did you find the physical evidence?

15 A. In the dumpster behind the motel there was
16 five or six bags of trash in the back in
17 the dumpster and we opened the bags and
18 went through them.

19 Q. Now, Detective or Chief, there came a time
20 when Nate Jackson was arrested?

21 A. Yes.

22 Q. And when he was arrested, did he have an

1 injury to his person?

2 A. Yes, he did.

3 Q. Where was that injury at?

4 A. His left index finger to the top knuckle.

5 Q. I'm going to show you State's Exhibits 239,
6 241 and 245, and ask if you recognize
7 what those Exhibits are?

8 A. Yes.

9 Q. What are those, and please refer to the
10 numbers.

11 A. State's Exhibit 239 is a photograph that was
12 taken on December 21, 2002 by Detective
13 Daniel Mason at the Trumbull County jail.
14 I was present when the photograph was
15 taken. It is a picture of Nate Jackson
16 with his arms spread out and a white
17 gauze bandage upon his left index finger.

18 Q. Okay.

19 A. Photograph 241 are photographs taken by
20 Detective Dan Mason at the police
21 department on December 21, 2001. They
22 exhibit a left and right hand shot

1 without bandage on Mr. Jackson's left
2 index finger, showing a wound to the top
3 knuckle. State's Exhibit 254 is a
4 photograph taken on December 21st, which
5 I have taken. This photograph depicts
6 only the left hand, and it shows an
7 injury to the same knuckle on the left
8 index finger.

9 Q. Now, on the date of his arrest, which I
10 believe was either December 20th or
11 December 21st, some articles of clothing
12 were given to you by officers?

13 A. Yes, it was on the 21st.

14 Q. I'm going to hand you State's Exhibit 318.

15 MR. INGRAM: Chief Monroe displayed
16 State's Exhibits 239, 241 and 245 to the Jury.
17 They have not been admitted, however, the Defense
18 has no objection to the display of those Exhibits.

19 THE COURT: You have no objection?

20 MR. INGRAM: No objection.

21 Q. I'm going to hand you State's Exhibit 318 and
22 State's Exhibit 317. I'll ask if you

1 recognize what those Exhibits are?

2 A. State's Exhibit 317 I recognize. These are
3 black fleece lined gloves that were
4 recovered at 791 Wirt Street in
5 Youngstown, Ohio by Detective Yannucci of
6 the Trumbull County Sheriff's Department.
7 The left index finger of the one glove is
8 damaged. There's some dark staining and
9 there's also a hole.

10 Q. Which glove is that, which hand?

11 A. This is the left hand and the left index
12 finger, State's Exhibit 318. These are
13 red and black Nike tennis shoes that were
14 recovered on Nate Jackson on the evening
15 he was arrested.

16 Q. Now, Detective, at the scene when you were
17 there on December 12, 2001, did you
18 observe, when were you at the scene, on
19 that step where the body was and that gun
20 was, and in that entrance way to the
21 kitchen, were there some footprints in
22 blood?

1 A. Yes.

2 Q. Can you tell this Jury first of all why --
3 well, let me ask you this. Were those
4 tennis shoes submitted for comparison
5 with any footprints?

6 A. No.

7 Q. Can you tell this Jury why not?

8 A. We didn't have these tennis shoes originally
9 when the items were submitted. At the
10 point that we probably could have
11 submitted them, we didn't feel we needed
12 to submit them.

13 Q. And that was in light of the other evidence?

14 A. Yes.

15 MR. INGRAM: Objection.

16 THE COURT: What is your objection
17 based on?

18 MR. INGRAM: I'll withdraw it.

19 THE COURT: That is an assumption on
20 his part. It may be a reason in his mind, the Jury
21 can accept it. Overruled.

22 Q. Now, in every case that you have investigated,

1 do you do -- have you done every possible
2 test in this case?

3 A. No.

4 Q. Have you ever had the case where you have done
5 every possible test?

6 A. No, it is impossible.

7 Q. Now, in addition to those items, and I'll ask
8 you to put those shoes and gloves away
9 while you still have your gloves on. In
10 addition to those records, did you also
11 obtain by subpoena some telephone
12 records?

13 A. Yes.

14 Q. I'm going to hand you State's Exhibit 321 and
15 ask if you -- I'm going to hand you
16 State's Exhibit 321 and ask if you
17 recognize State's Exhibit 321.

18 A. Yes.

19 Q. What is that State's Exhibit 321?

20 A. State's Exhibit 321 are -- is a call report
21 from Bob Dobson Communication, which
22 indicates account numbers for cellular

1 telephone service for specific telephone
2 numbers.

3 Q. And would those be the telephone numbers of --
4 that was in the cellular phone in the
5 silver Chrysler?

6 A. Yes. Well, you have got the silver Chrysler,
7 there's a hand held portable.

8 Q. That is the number you previously testified to
9 as 506-0373?

10 A. Yes. That telephone, the silver Chrysler and
11 the red Chrysler.

12 Q. And those were obtained by subpoena by you and
13 they are certified copies?

14 A. Yes.

15 Q. There's a certificate on the front of that?

16 A. Yes.

17 Q. Now, when you got those telephone calls, you
18 were able to discover phone calls or were
19 you able to determine that there were
20 phone calls made from the cellular phone
21 call to the phone in any of the cars?

22 A. Yes.

1 Q. On the night of December 11th?

2 A. Yes.

3 Q. And were you able to determine whether the
4 calls were made the other way?

5 A. Yes.

6 Q. And do you know what hours during December 11,
7 2001 those calls were made?

8 A. Yes.

9 Q. And they were made, and those records reflect
10 that?

11 A. If you look on this report on page two, it
12 specifically addresses the telephone
13 number 506-0373 and it indicates the
14 calls that were made from that phone to
15 another phone; and then on page ten, it
16 addresses calls which were made from the
17 telephone number 509-0271 which is the
18 red Chrysler, and the calls that were
19 made from that phone and to what phone
20 they were made to. If there was say an
21 incoming call, it also indicates the same
22 number.

1 Q. And does it list the time of those calls on
2 there?

3 A. Yes, it does.

4 Q. And does it list the date?

5 A. Yes.

6 Q. And can you read -- what page are you looking
7 at right now?

8 A. I'm going to go between, on page two and page
9 ten.

10 Q. And all of those calls are listed to and from
11 those telephones?

12 A. Right. For example, at 2145 hours on December
13 11th, a call was made, it shows from
14 509-0271, which was the red Chrysler, and
15 then where it says number called, it
16 shows the same number, but beside it, it
17 says incoming, so if you go back to page
18 two and look up the time which would
19 correspond with that, it shows that at
20 the same exact time, telephone 506-0337
21 called 507-0271, which is the red
22 Chrysler. So at that time, Donna

1 Roberts' portable phone is calling her
2 fixed mounted mobile phone in the red
3 Chrysler.

4 Q. And you had a chance to go through those phone
5 records prior to coming to Court today,
6 right?

7 A. Correct.

8 Q. And there were a number of those instances, is
9 that correct?

10 A. Yes.

11 Q. During the hours of approximately 9:00 p.m. to
12 12 midnight on December 11, 2001?

13 A. Yes.

14 Q. Calls going from both phones?

15 A. Yes.

16 Q. To the other phone?

17 A. Yes.

18 Q. Is the phone call that you received from
19 330/506-0373 at approximately 3:38 a.m.
20 at the Roberts' residence, is that phone
21 call in those records?

22 A. Yes, it is.

1 Q. And it depicts the cellular phone call calling
2 the residence while you were there and
3 ,answering it at 3:30 in the morning on
4 December 12th?

5 A. Yes, it does.

6 Q. Eventually you went to the Red Lobster, is
7 that correct?

8 A. Yes.

9 Q. And you obtain a statement from someone there?

10 A. Yes.

11 Q. Was an identification made of any individual
12 or individuals that ate there on December
13 11, 2001?

14 A. Yes.

15 Q. Who made that identification?

16 A. Jill Kenyon.

17 Q. And you obtained a statement from her -- or
18 I'm sorry, a statement from her as well
19 as a written photographic line-up?

20 A. Yes.

21 Q. And she initialed the same?

22 A. Yes.

1 Q. You also obtained some other evidence from
2 her?

3 A. Yes, receipts.

4 MR. BECKER: At this time, we have
5 no further questions of this witness.

6 THE COURT: This is an opportune
7 time to break. We have criminal in the morning, so
8 we'll start at 1:00 in the afternoon. You are done
9 with the witness on direct or just stopping for
10 today?

11 MR. BECKER: Could we break for
12 today? There's one piece of evidence that I don't
13 have that I would like to introduce with him. I
14 can't find it here.

15 THE COURT: I'll permit that with
16 the instruction. There's to be no talking with the
17 witness.

18 MR. BECKER: I have one Exhibit that
19 I would like to present to him, and I'll give my
20 word that I'll not speak to this witness about this
21 case, but I do want to discuss something with
22 Mr. Bailey.

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1 THE COURT: I didn't understand --

2 MR. BECKER: It is close to 4:30 and
3 I would like to break today if we could, because I
4 would like to get one more Exhibit and I would like
5 to discuss something with Mr. Bailey.

6 THE COURT: The Court will permit
7 that with no conversation ensuing between the
8 witness and yourself.

9 MR. INGRAM: We have no doubt that
10 Mr. Becker will abide by the rule. We simply
11 object to him having any conversation with
12 Mr. Bailey.

13 THE COURT: Folks, you are done for
14 another day. You will be back here at 1:00
15 tomorrow afternoon. I trust you all have a nice
16 evening. I would again remind you not to read
17 anything in any newspaper, watch anything on T.V.,
18 have any conversation with anyone else during the
19 course of the evening break. You all have a nice
20 evening. Thank you.

21 (Court in Recess at 4:20 p.m.)

22 THE COURT: We had two Side Bars.

1 The one was in reference to an objection by the
2 State to Mr. Monroe. They thought he was reading
3 his notes. The notes were taken away by Mr. Becker
4 and he continued on with his testimony, is that
5 correct?

6 MR. INGRAM: That is correct.

7 THE COURT: The second issue was in
8 regard to the tape recording and I think Mr. Becker
9 got off that subject.

10 MR. INGRAM: He did.

11 THE COURT: And that should be no
12 problem either, is that correct?

13 MR. JUHASZ: Yes, Sir.

14 THE COURT: See you tomorrow.

15 (Court adjourned at 4:22 p.m.)

16

17

18 Thursday, May 22, 2003; In Open Court at 1:20 p.m.:

19 MR. BECKER: I wanted to put on the
20 record a few things outside of the presence of the
21 Jury. There were two letters that were introduced
22 through this trial, and I believe they were

1 stipulated to, and as the other letters there,
2 they are 275-A and 275-B, is that correct?

3 MR. INGRAM: That is correct.

4 MR. BECKER: Now the one area that I
5 do want to address very briefly is, I have got a
6 few more questions for Detective Monroe or Chief
7 Monroe, and I want to put, because we had this on
8 the Side Bar yesterday and I believe it was out of
9 the hearing or was not on the record. The State
10 wanted to question Officer Monroe about a statement
11 the Defendant gave on December 15, 2001, which was
12 tape recorded. There was an objection to that line
13 of questioning because the State could put on the
14 tape, I guess.

15 MR. INGRAM: That is correct.

16 MR. BECKER: While we take exception
17 with that ruling, we'll live with that ruling and
18 the State was then not permitted to question
19 Officer Monroe about that statement at all. So, I
20 want to make it clear that Defense is not going to
21 try to elicit any responses regarding that tape or
22 try to introduce that tape.

1 THE COURT: My understanding is a
2 little bit different than what you both agreed to
3 here. My understanding is that there was a tape
4 and I believe Mr. Ingram had said that he was told
5 at one point or one of the witnesses stated there
6 was no such tape. Am I in error on that? Were you
7 provided the tape?

8 MR. INGRAM: We were provided the
9 tape.

10 THE COURT: I took the objection to
11 be that you were trying -- or his objection was to
12 you attempting to get the substance of the tape in
13 through the testimony rather than the tape itself.
14 I told you at Side Bar, you were able to hit
15 highlights of it, but you couldn't get the whole
16 tape in. If you wanted to get the substance in,
17 you had to bring the tape into the case.

18 MR. BECKER: Then I am confused on
19 that ruling. I'll be able to ask questions -- I'll
20 be able to ask questions about that conversation or
21 not? Are they going to have the same objection?

22 THE COURT: That is with the caveat

1 that you can't use his testimony in lieu of the
2 tape, if there's some salient point in there to
3 prove some other point. But once you delve into
4 that realm, I think the tape should be brought into
5 testimony. Do I make that clear at all?

6 MR. INGRAM: Yes. If you plan on
7 asking a couple of limited questions about that
8 conversation, I don't object, but if you are going
9 to ask an hour's worth of questions, then I do
10 object. I'm not sure I am making any sense.

11 MR. BECKER: I don't think we're
12 going to introduce that tape, but I want to make it
13 perfectly clear that because the -- I thought the
14 ruling was because the tape is quote unquote the
15 best evidence. Although I have disagreed with that
16 ruling, I respectfully disagree with that, but I'll
17 live with that ruling, that it is the best evidence
18 that I cannot ask Officer Monroe 20 minutes or so
19 of questions about that conversation and that is
20 fine, that it is the Court's ruling. But I don't
21 want to be barred from introducing and questioning
22 him about that tape and have Defense Counsel

1 question him about her cooperation.

2 THE COURT: I agree with that.

3 MR. BECKER: They cannot pursuant to
4 the evidence rules, because it is a hearsay
5 statement, they can't even introduce the tape.

6 THE COURT: Just so it is clear, my
7 ruling did not stop you from asking pertinent
8 questions about something in that tape, but to get
9 the substance of the tape before the Jury, I think
10 the best evidence is the tape.

11 MR. BECKER: Okay. I'm not going to
12 introduce the tape and I'm not going to ask him any
13 questions. We have not asked him any questions, at
14 least that he's answered before the objection.

15 THE COURT: The Defense will be
16 denied the opportunity to delve into that.

17 MR. INGRAM: I planned on asking
18 three questions about that tape. I was not going
19 to ask about the words that were used by the
20 Defendant, but I was going to ask three questions
21 about whether or not three subjects or issues were
22 discussed.

1 THE COURT: Not what the discussion
2 was, but whether they were discussed?

3 MR. INGRAM: For instance, that on
4 December 15th in that conversation, she told you
5 about seeing Nate on Monday and Tuesday, including
6 a haircut and dinner at the Red Lobster.

7 THE COURT: I have no objection to
8 that, but I think it opens the door to them on
9 redirect examination to explain anything.

10 MR. INGRAM: I understand.

11 THE COURT: Is that agreed?

12 MR. BECKER: We're going to object
13 to those questions, since we were not permitted to
14 ask about the substance of the tapes. I think that
15 is what he's doing is he's asking about substance
16 of the tape, the conversation.

17 THE COURT: He's not in a
18 position -- well, I guess he could introduce the
19 tape on his motion.

20 MR. BECKER: It's hearsay. It is an
21 out of Court statement. It is not offered against
22 the party opponent. It is hearsay and there's no

1 exception to it.

2 THE COURT: That is the reason then.

3 MR. BECKER: That he can not
4 introduce it.

5 THE COURT: But he can ask questions
6 and that opens the door for you to follow up.

7 MR. BAILEY: The questions that he's
8 asking are questions that deal with the substance
9 about it.

10 THE COURT: I understand that opens
11 the door for the substance on your end of it.

12 MR. BECKER: Our objection is going
13 to be that he's eliciting hearsay and there's no
14 exception to the rule. He can't introduce her
15 statement because it is hearsay. It is definition
16 hearsay. It is not offered against her as a party
17 opponent. It is offered to either support her
18 position or it's hearsay. It is her statement. It
19 is her out of Court statement.

20 MR. JUHASZ: I don't disagree that
21 the statement is definitely hearsay. I also don't
22 disagree that -- well, I'm sorry. If they want to

1 use it, it is not definitely hearsay, it is an
2 admission which is not an exception to the hearsay.
3 It is defined as non-hearsay, but the recorded
4 statement itself is a statement. It falls within
5 the best evidence rule, and it would be like if I
6 have a lease and I stand up and say, "Well, okay,
7 the lease says that your rent is this and your
8 lease says you have to do this and the lease says you
9 have to do that." The best evidence rule I think does
10 govern that, and so, what they have done and I
11 think what they are intending to do is in essence
12 by asking questions, introduce the contents of a
13 recording which falls within the best evidence
14 rule.

15 Now, the other thing that I have to say
16 about that is they have done that to a limited
17 extent already, and in essence, presented only
18 portions of what is in that statement. I think
19 that on cross examination in the interest of
20 showing bias, because if I ask you only the
21 questions that I want to ask you and have not
22 represented the entire contents of the statement, I

1 think you are allowed to go into that under cross
2 examination to show, well, you have a little bit of
3 a bias here, because you are only bringing out the
4 parts that you want to bring out, and I don't think
5 it is hearsay for those purposes, because you are
6 not offering to prove the matters of the proof
7 asserted. You are offering it to show the bias.

8 THE COURT: The problem is my
9 recollection is that they were pretty well
10 precluded from getting into the tape.

11 MR. BECKER: We did not present any
12 substance of the conversation because the objection
13 was sustained and that was a Side Bar, which I
14 wanted to put on the record. We didn't get into
15 any conversation of the December 15, 2001 statement
16 and we have been barred. If we don't get into it,
17 then Mr. Juhasz' argument is out the window.

18 THE COURT: John, I would buy your
19 argument on better terms if they had presented
20 something that would be unfair to not allow you to
21 delve into it further. My recollection is they
22 never got into the substance.

1 MR. JUHASZ: I am inclined to agree
2 with that, however, I am looking at my trial notes
3 from yesterday, and I think that what I just said
4 as far as bias does apply to the extent of the
5 general questions Jerry wants to ask, because I
6 have got notes here that Detective Monroe said that
7 she wasn't forthcoming and she was uncooperative.
8 He's allowed to ask questions to show that that is
9 not a correct statement, I think.

10 THE COURT: Now do you do that with
11 didn't she say this and didn't she say that?

12 MR. JUHASZ: He's not planning to
13 say that. He's planning on asking, "Didn't you
14 guys talk about this?" The difference is to
15 clarify what I'm trying to say if I want to come
16 into Court and say that I had a conversation with
17 Gary Bacon who saw the accident and Gary Bacon
18 said, "The car ran the red light." That is
19 obviously hearsay. It is not hearsay to say, "Well
20 Gary Bacon and I talked about the accident."

21 THE COURT: I agree.

22 MR. BECKER: Mr. Ingram and I think

1 we have resolved this issue.

2 THE COURT: My inclination is to
3 allow them to proceed as long as you don't get into
4 bringing out what was said. If he wants to inquire
5 about the mode of the conversation, that is
6 apparently where you are going. I think that is
7 proper to delve into. What is your agreement?

8 MR. BECKER: Mr. Juhasz is going to
9 ask essentially about the prison talk aspect of
10 that question, which was the question --

11 MR. INGRAM: I do plan on going into
12 the rights recitation. Before he talked to her on
13 the 15th, he gave her her rights and she agreed to
14 talk to him.

15 MR. BECKER: We'll have the same
16 objection to that.

17 THE COURT: I didn't hear the
18 question.

19 MR. INGRAM: That before the
20 conversation on the 15th, Chief Monroe informed her
21 of her rights. She waived those rights and freely
22 agreed to engage him in discussion. I don't then

1 plan on going into the discussion.

2 THE COURT: I'll permit that.

3 MR. BECKER: And my objection is
4 going to be that that is also hearsay. And I'm
5 going to cite the Court to a number of cases,
6 particularly State vs. Gatewood, 1984, 15 Ohio
7 Appellate 3rd at 14; a party may not introduce his
8 own statement under evidence rule --

9 THE COURT: He's not introducing the
10 statement.

11 MR. BECKER: He's introducing the
12 statements that he cooperated.

13 THE COURT: That question is in
14 response to the testimony that she was
15 uncooperative. That is the only purpose that he's
16 bringing that question into it.

17 MR. BAILEY: In this one case, State
18 vs. Davis, it is found at 1996 West Law 465, 254,
19 the Court held, it was the Franklin County
20 Appellate from the Franklin County Court of Common
21 Pleas, it would have the Tenth Appellate District,
22 1996 case, where the Prosecutor argued that the

1 waiver form and the statement constituted
2 inadmissible hearsay and the Court agreed. It went
3 to both the waiver and the statement. We have got
4 that case if the Court wants to see it.

5 MR. INGRAM: I would like to see it.

6 THE COURT: I can see where that
7 case is correct, but I distinguish that from the
8 present situation where we're at because the
9 question was asked, she was uncooperative. His
10 only way to rebut that, didn't she sign the waiver?

11 MR. BECKER: I would tend to agree
12 with the Court on that issue.

13 THE COURT: You fellows can object
14 if you attempt to go further.

15 MR. BECKER: That is where we're
16 going to be at. Thank you.

17 MR. INGRAM: I do want the record to
18 reflect that the case Mr. Bailey cited doesn't say
19 what he cited. I take that back.

20 (Jury brought into the Courtroom at 1:35 p.m.)

21 THE COURT: Good afternoon. After
22 you leave and we excuse you for the day, there's

1 always things that we have to put on the record,
2 and some of the matters that we didn't cover fully
3 yesterday, which we thought we had, came up again
4 this afternoon, so that is the reason there's a
5 delay of you sitting down there.

6 CONTINUING DIRECT EXAMINATION BY MR. BECKER:

7 Q. Detective Monroe, yesterday we had talked
8 about some things and I want to just be
9 very brief here this afternoon. While
10 you were at the scene on December 11,
11 2001, did you discover anything under the
12 body of Robert Fingerhut?

13 A. Yes.

14 Q. I'm going to hand you what has been marked for
15 purposes of identification as State's
16 Exhibits 407 and 408 and I believe by
17 agreement of Defense Counsel, there's no
18 need to open those, but I believe -- can
19 you identify those?

20 A. State's Exhibit 408 is marked as evidence item
21 number 21. It is a paper tag with a
22 metal ring around it, and it had the

1 writing 498 Olive Street written on the
2 paper tag. Exhibit 407 is a key found on
3 the floor under the victim.

4 Q. And those keys were then bagged by yourself
5 and marked?

6 A. Yes.

7 Q. And your signature is on those?

8 A. Yes.

9 Q. Those keys were for -- I'm sorry, key, single
10 key, or were you able to determine where
11 those keys were for, what they were for?

12 A. State's Exhibit 407 fits a lock at 494 Olive
13 Street.

14 Q. And do you know who owns 494 Olive Street or
15 who owned that property in December of
16 2001?

17 A. Donna Roberts.

18 Q. And do you know what kind of property that was
19 in December of 2001?

20 A. It was a rental property.

21 Q. Now, Detective, I want to ask you about your
22 investigation in firearms that were

1 missing in this investigation. How many
2 firearms were missing from the Roberts,
3 Fingerhut residence?

4 A. One firearm.

5 Q. And how many firearms total were missing from
6 either businesses, automobiles, and
7 locations in total?

8 A. Two.

9 Q. Do you know the makes of those two firearms
10 that were missing?

11 A. Yes.

12 Q. What were the makes of those two firearms and
13 caliber?

14 A. One was a Smith and Wesson .38 caliber
15 revolver, and the other was a Taurus .38
16 caliber revolver.

17 Q. And which one was the one that Santiago Mason
18 was accused of taking?

19 A. The Smith and Wesson .38 revolver.

20 Q. And as of today's date, May 22, 2003, have
21 either one of those firearms been
22 recovered?

1 A. No.

2 Q. With respect to a number of individuals that
3 she gave you their names on December
4 12th, did you ever determine or find out
5 the sexual orientation of Mr. Fingerhut?

6 A. Yes.

7 Q. And what did you discover?

8 MR. INGRAM: Objection.

9 THE COURT: Approach please.

10 MR. BECKER: I'll ask this. I'll
11 withdraw that question and ask this.

12 Q. Did you ever find Bobby?

13 A. No.

14 Q. Did you ever find Carlos?

15 A. No.

16 Q. You did find Santiago Mason?

17 A. Yes.

18 Q. You did find Nate Jackson?

19 A. Yes.

20 Q. Now we talked yesterday and you were looking
21 at State's Exhibit 321. I want to ask
22 you some questions about State's Exhibit

1 321 which were the copies, certified
2 copies of the phone calls for December
3 11, 2001; is that correct?

4 A. Yes.

5 Q. According to the Defendant, when you talked to
6 her in the afternoon of December 12,
7 2001, who had her cell phone?

8 A. Nate Jackson had her portable cell phone that
9 had the phone number 330/506-0373.

10 Q. Now, this may be a little cumbersome, but can
11 you tell us, if there, specifically
12 looking at December 11, 2001 at 9:45
13 p.m., what number was called at
14 approximately 9:45 p.m. by that number
15 506-0373?

16 MR. INGRAM: I do object. This
17 question has been asked and answered. It was asked
18 and answered yesterday.

19 THE COURT: I thought that it had
20 been asked and answered also yesterday. Am I
21 incorrect on that?

22 MR. BECKER: I think I asked him

1 generally and he discussed one phone call. I would
2 like to ask him about each and every specific phone
3 call at this point.

4 THE COURT: I'll overrule the
5 objection. Approach for a moment, please.
6 (SIDE BAR DISCUSSION, OFF THE RECORD AND
7 OUT OF HEARING)
8 (Proffer into the record.)

9 MR. INGRAM: The Defense objects to
10 the following question and will put the nature of
11 the objection on the record later.

12 THE COURT: The Court will rectify
13 the record at the appropriate time.

14 Q. On December 12, 2001 at 9:45 p.m., can you
15 tell us based on those phone records,
16 what number was called? Either what
17 number was called or what number was
18 called to from 330/506-0373?

19 A. You mean on December 11th?

20 Q. Yes.

21 A. Yes.

22 Q. What number was called?

1 A. 330/509-0271.

2 Q. And that was the phone in which Chrysler?

3 A. In the red Chrysler 300-M.

4 Q. That was driven by whom on December 11, 2001?

5 A. Donna Roberts.

6 Q. At 9:47 p.m., on December 11, 2001, can you
7 tell us what number was called by that
8 cellular phone, 506-0373?

9 A. The same number 509-0271.

10 Q. Can you tell us what number was called at 9:54
11 by 506-0373 the portable phone?

12 A. The same number 509-0271.

13 Q. Can you tell us what number, the portable
14 phone of that Mr. Jackson had was called
15 at 9:55?

16 A. 509-0271.

17 Q. Can you tell us what number was called by the
18 phone that Mr. Jackson had at 9:59 p.m.?

19 A. 509-0271.

20 Q. Can you tell us what phone number was called
21 at 10:00 from that portable phone that
22 Mr. Jackson had in his possession?

5958

1 A. The same number.

2 Q. Can you tell us what number was called at

3 10:03:03 p.m. by that -- strike that.

4 Can you tell us what number was called at

5 10:03 p.m. by Donna's cellular phone in

6 her car, 509-0271 number?

7 A. Yes. At 10:03, the 509-0271, which is in the

8 red Chrysler called 506-0373.

9 Q. Which was the portable that Nate Jackson had?

10 A. Yes.

11 Q. The one that she forgot that he had taken?

12 A. Yes.

13 Q. Now, can you tell us at 11:01 p.m., what

14 number that phone call, the one from the

15 car, what phone number it called?

16 A. At 11:01 on December 11th, the portable cell

17 phone called 509 --

18 MR. INGRAM: Objection. It is not
19 responsive to the question.

20 MR. BECKER: I asked him.

21 MR. INGRAM: You asked about the
22 other phone.

1 Q. I'm sorry. What did I say? Let me rephrase
2 that.

3 THE COURT: Sustained.

4 Q. At 11:01, what number did the portable phone
5 call?

6 A. At 11:01 on December 11th, the portable phone
7 called 509-0271, which is in the red
8 Chrysler.

9 Q. And again, at 11:44 p.m. on December 11, 2001,
10 20 minutes before the phone call to 911
11 by Miss Roberts, what number did this
12 portable phone call?

13 MR. INGRAM: I object to the
14 suggestions that Mr. Becker wants to testify, that
15 maybe he should take the witness stand.

16 MR. BECKER: I have asked who, what
17 where and when.

18 THE COURT: Overruled. I think it
19 is a proper question.

20 A. 11:44 hours, portable cell phone called
21 509-0271.

22 Q. And again that is whose vehicle?

1 A. Donna Roberts.

2 MR. BECKER: I have no further
3 questions of this of this witness at this time.

4 CROSS EXAMINATION BY MR. INGRAM:

5 Q. Before I ask you some questions, let's
6 establish a ground rule. If at any point
7 in time during our conversation you want
8 to look at any of your notes or your
9 investigative reports, feel free to do
10 so.

11 A. Okay.

12 Q. You then read the report, and if it refreshes
13 your recollection, then you can answer
14 the question. What you can't do is take
15 the report and then read the report.
16 That is why the notebook was taken away,
17 but you are certainly free to ask for it,
18 review it, and we can deal with those
19 requests. That is perfectly fine. Is
20 that fair enough to you?

21 A. Yes, Sir.

22 Q. You arrived at 254 Fonderlac at approximately

1 12:35 a.m., am I correct?

2 A. Yes.

3 Q. And you are actually the fourth police officer
4 on the scene?

5 A. Yes.

6 Q. There's Patrolman Ray, Patrolman Pullcino,
7 Detective Dillon, correct?

8 A. Yes.

9 Q. And then there are some fire department
10 personnel?

11 A. Yes.

12 Q. And how many fire Captains were there?

13 A. One.

14 Q. You told us yesterday that that fire Captain
15 was Captain Swindler?

16 A. No.

17 Q. Isn't that what you said yesterday?

18 A. I don't believe I did.

19 Q. If you said Captain Swindler yesterday, that
20 would have been a mistake?

21 A. Yes, Sir.

22 Q. It was?

1 A. It was Captain Phillips.

2 Q. There was an EMT there by the name of George
3 Beck and another EMT that you could not
4 identify?

5 A. I think the other fireman that was there, he
6 wasn't an EMT but there was another fire
7 person there.

8 Q. Do you know his name?

9 A. I'm not certain. I believe it was Hank
10 Wingard.

11 Q. The first thing you want to do is obtain
12 information from the patrolman who
13 arrived first to see what was going on,
14 am I right?

15 A. Yes, Sir.

16 Q. And you and Officer Ray go out to like the
17 front porch or the front yard and have a
18 brief conversation in the front yard?

19 A. Yes.

20 Q. And while that conversation is going on, Donna
21 Roberts is in the master bedroom?

22 A. She's in the house. She could be in the

1 bedroom.

2 Q. When you saw her, where was she?

3 A. She was in the bedroom.

4 Q. Did you ask Patrolman Ray where he and officer
5 Pollcino had sort of stashed Donna while
6 they were going about their professional
7 obligations?

8 A. No.

9 Q. When you see Donna in the bedroom, is she in
10 the bedroom alone or in there with
11 someone else?

12 A. She was alone.

13 Q. Do you know how long she had been alone in
14 that bedroom?

15 A. No, I don't.

16 Q. And you then engage her in a brief
17 conversation, am I correct?

18 A. Yes.

19 Q. And the purpose of that conversation was to
20 obtain information from her?

21 A. Yes.

22 Q. But you wanted to know if the house had been

1 burglarized?

2 A. Yes.

3 Q. And burglarized, whether someone took
4 something?

5 A. If there's anything obvious that is missing or
6 out of place.

7 Q. And before you talked to her, you had already
8 done a quick sweep to see if you, with an
9 unfamiliar eye, could determine whether
10 anything was missing?

11 A. I don't know that I had done a quick walk
12 through the house to see if I could
13 notice anything. Sometimes when you walk
14 into a burglary scene, walk in the living
15 room and there's an entertainment center
16 and it is empty except for a television,
17 it would be a clue that something is
18 missing. But I don't believe that I had
19 done that before I talked to Donna
20 Roberts.

21 Q. Do you recall testifying in a preliminary
22 proceeding in this matter on February 26,

1 2003?

2 A. Yes.

3 Q. Page 89. Does that talk about a walk through?

4 A. Yes.

5 Q. Is that walk through before you talked to
6 Donna?

7 A. I'm going to have to read back at least
8 another page.

9 Q. Go ahead, feel free.

10 A. I don't believe that is what this says, Sir.

11 Q. The part about the walk through on page 89,
12 the sentence right before that says, "I
13 asked her if she knew of anything that
14 was missing," right before you describe
15 the walk through, correct?

16 A. Yes, but if you go up a few lines, it also
17 discusses where I have talked to her and
18 I asked her if there's a neighbor we
19 could have come and sit with her, which
20 would indicate to me this is a later
21 conversation. The thing that I want you
22 to understand is that when I would walk

1 back and talk with Donna Roberts,
2 sometimes she would start crying and
3 would become emotional and the
4 conversations weren't productive. So, to
5 say I went in there on December 12th, at
6 12:30 p.m. and I talked to her for 15
7 minutes straight, and then I didn't talk
8 to her again, that wouldn't be correct.
9 I would talk to her, and then she would
10 get upset and I would leave the room and
11 let her kind of gather herself and come
12 back and talk to her again.

13 Q. My question simply is this. Before you talked
14 to her the first time, do you recall if
15 you had done a quick walk through --
16 through the house to see if anything was
17 missing?

18 A. I don't think so.

19 Q. You did do a walk through at some point in
20 time?

21 A. Yes, I did.

22 Q. And nothing was missing to the unfamiliar eye,

1 is that correct?

2 A. Yes.

3 Q. The house was not ransacked?

4 A. No.

5 Q. Drawers were not overturned?

6 A. No.

7 Q. As a matter of fact, although Donna was
8 emotional and would sometimes break into
9 tears, when you needed information back
10 on December 11th, you found her to be
11 cooperative in providing you information,
12 did you not?

13 A. No.

14 Q. You did not find her cooperative in providing
15 you information?

16 A. In the context of the investigation on the
17 surface, you may think that she was
18 cooperative, but she was the only person
19 that was in the home that could have
20 provided us some crucial information that
21 wouldn't have wasted our time
22 immediately. On face value it appeared

1 that she was very cooperative.

2 Q. And on February 26, 2003, if you go to page
3 119, you say you know when I needed
4 information from Donna Roberts, she was
5 cooperative. That would be lines nine
6 and ten.

7 A. Like I said --

8 Q. Check and see if that is your sworn testimony
9 on your own first --

10 A. Okay. Which lines?

11 Q. Lines nine and ten on page 119.

12 A. Okay.

13 Q. Are those your words? Why don't you read
14 those words?

15 A. "The question is did you purposely try to have
16 somebody within earshot of that first
17 conversation?" Answer. "You know when I
18 need information from Donna Roberts, she
19 was cooperative. I would try to get
20 someone" --

21 Q. Those are your words?

22 A. Yes.

1 Q. That was sworn testimony under oath?

2 A. Yes, it was.

3 Q. That was the truth?

4 A. Yes, it is.

5 Q. And that testimony was given on February 26,
6 2003?

7 A. Yes, Sir.

8 Q. Well after Donna Roberts' arrest?

9 A. Yes, Sir.

10 Q. Did you ask her for a swab of her hand, the
11 gunshot residue swab?

12 A. Yes, Sir.

13 Q. Did she resist that request?

14 A. No, Sir.

15 Q. She didn't tell you no, she told you, "Go
16 ahead and swab my hands," correct?

17 A. Yes, she did.

18 Q. Did you want her to provide you with her
19 shirt --

20 MR. INGRAM: Gentlemen, you are a
21 little loud. Please.

22 Q. Did you want her to give you her shirt?

1 A. Yes, I did.

2 Q. Did she resist that request?

3 A. No, she did not.

4 Q. She didn't tell you no?

5 A. No, she did not.

6 Q. She simply went and changed her shirt and gave
7 it to you, so you could do whatever you
8 wanted with it?

9 A. Yes, she did.

10 Q. By the way, did you submit that shirt to BCI?

11 A. Yes.

12 Q. Was it tested?

13 A. No.

14 Q. Did you tell them not to test that shirt?

15 A. No.

16 Q. Do you recall testifying yesterday when you
17 were talking with Mr. Becker about some
18 ATF documents and ATF is Alcohol, Tobacco
19 and Firearms, correct?

20 A. Yes, it is.

21 Q. And you and he discussed State's Exhibits 327

22 A, B and C?

1 A. Yes.

2 Q. And those were reports that you had received
3 back from ATF about some guns?

4 A. Yes.

5 Q. Isn't it a fact that you were able to request
6 that information because Donna Roberts
7 gave you the serial number for those
8 guns?

9 A. Yes.

10 Q. By the way, was the gunshot residue swab taken
11 of Mr. Fingerhut's hand?

12 A. No.

13 Q. Now you have already told us that on occasion
14 Donna would break down in tears. When
15 you first saw her, her eyes were actually
16 puffy and it was obvious that she had
17 been crying, correct?

18 A. Yes.

19 Q. And the entire time you dealt with her on
20 December 11th, she portrayed herself as
21 the grieving spouse?

22 A. Yes, Sir.

1 Q. And she was not a suspect while she was in
2 that house on December 11, 2001, was she?

3 A. No, she was not.

4 Q. And she was there for hours before Ralph and
5 Rita Roberts came to pick her up, was she
6 not?

7 A. I think she was there about two hours, two and
8 a half hours.

9 Q. And during those two and a half hours, within
10 reason, she was free to move about as she
11 desired, correct?

12 A. Yes.

13 Q. No one was assigned to monitor her movements?

14 A. We requested that she stay in the back of the
15 house and she did.

16 Q. My question was, was anyone assigned to
17 monitor her movements?

18 A. Nobody was assigned to monitor Donna Roberts.

19 Q. When you say that you requested that she stay
20 in the back of the house, number one,
21 that is so she didn't get in your way?

22 A. Yes.

1 Q. And number two, the master bedroom is in the
2 back of the house, right?

3 A. Yes, from the crime scene without going in the
4 basement, one of the furthest points
5 away.

6 Q. During this two and a half hours, she
7 primarily stayed in the master bedroom,
8 did she not?

9 A. Yes.

10 Q. And during this two and a half hours, she's in
11 the master bedroom alone, is she not?

12 A. Yes.

13 Q. That was your idea as I understand it, to call
14 Ralph and Rita Roberts to see if they
15 would come to 254 Fonderlac?

16 A. Yes.

17 Q. And that was because Donna Roberts had told
18 you that you could do whatever you wanted
19 to her house, you could search the entire
20 place. She just wanted you to find the
21 person that did this?

22 A. Is that why I requested?

1 Q. You knew you were going to be there a long
2 time, correct?

3 A. Yes.

4 Q. And you knew you were going to be there a long
5 time because she told you you could
6 search the entire house, do whatever you
7 wanted, find who did it?

8 A. I don't understand what your question is.

9 Q. Did you need her consent to search that house?

10 A. Yes.

11 Q. Did she give you consent?

12 A. Yes, she did.

13 Q. And before she gave you consent, did you tell
14 her, "There was a bad person here, we
15 don't know where he may have gone, we
16 don't know what he may have done, we have
17 to search the whole house. It may take a
18 long time"?

19 A. Yes, I told her that.

20 Q. So you called Ralph and Rita Roberts, because
21 it was going to take a long time to
22 search the house. That's not a difficult

1 question.

2 A. No, that is not why I called Ralph and Rita.

3 I called them because I felt that her
4 husband had just been murdered and that
5 somebody probably ought to come and sit
6 with this woman out of compassion.

7 Q. You also wanted to see if they would take her
8 to their home, correct?

9 A. Yes.

10 Q. Because you were going to be there for a long
11 time processing the scene?

12 A. I felt that in the best interest of Donna
13 Roberts, it would be better if she left
14 and went with a neighbor or family
15 member.

16 Q. And before she left, she gave you carte
17 blanche authority to search anything in
18 that house, wherever it was located,
19 whatever you desired?

20 A. Yes, she did.

21 Q. And before she leaves, she has to gather some
22 personal belongings to take with her,

1 doesn't she?

2 A. Yes, Sir.

3 Q. And she does gather personal belongings?

4 A. Yes.

5 Q. And she also gathers up the dogs and takes
6 them with her?

7 A. Yes, she did.

8 Q. And in the process of gathering up the dogs
9 and gathering up the personal belongings,
10 she is sort of moving from room to room a
11 little bit, correct?

12 A. As I recall, primarily she stayed in the --
13 whatever belongings she took with her
14 came from the master bedroom.

15 Q. Take a look at page 121 there.

16 A. Okay.

17 Q. Lines nine through 11.

18 A. "She went from the bedroom to the formal
19 living room which is right next to it as
20 you go out the front door. That is where
21 her family was standing."

22 Q. She kept going back and forth from those two

1 rooms?

2 A. Yes.

3 Q. Did she have to get dog food?

4 A. Yes.

5 Q. Was the dog food in the bedroom or the living
6 room?

7 A. I don't know.

8 Q. While she was gathering up her belongings, no
9 one was assigned to monitor what she was
10 packing up to take with her, correct?

11 A. Not that I know of.

12 Q. And when she left, she took some belongings in
13 a bag or something?

14 A. She took some belongings. I don't know what
15 she took with her.

16 Q. No one inspected what she took with her,
17 correct?

18 A. That is correct.

19 Q. Handing you what has been marked for
20 identification purposes as Defendant's
21 Exhibit 4. Is that a photograph of the
22 drawer within 254 Fonderlac?

1 A. Yes, it is.

2 Q. Taken by you or one of your fellow police
3 officers on December 11th?

4 A. Yes.

5 Q. And that is a drawer which contains for lack
6 of a better term, some sex toys?

7 A. Yes.

8 Q. And amongst those sex toys is a pair of
9 handcuffs?

10 A. Yes.

11 Q. Were those handcuffs removed or seized on
12 December 11th?

13 A. No, they were not.

14 Q. Handing you State's Exhibits 4 and 5. Can you
15 tell us what those are, please?

16 A. State's Exhibit 4 and 5 are two different
17 photographs from different angles of a
18 plastic serving tray that has some drug
19 paraphernalia, small amount of marijuana,
20 and what is referred to, as I think,
21 there's a couple of roaches, which are
22 burnt stubs of marijuana cigarettes.

1 Q. Did you ask Donna Roberts whose marijuana that
2 was?

3 A. Yes.

4 Q. Did she tell you it was her's?

5 A. Yes.

6 Q. She also tell you Robert never touched the
7 stuff?

8 A. Yes.

9 Q. And was that marijuana hidden away? Was it
10 concealed? Where was that plate?

11 MR. BECKER: I'm going to object to
12 this line of questioning. She's not charged with
13 possession of marijuana.

14 THE COURT: What is the purpose?

15 MR. INGRAM: To establish that it
16 was in plain view.

17 MR. BECKER: There's no relevancy.

18 MR. INGRAM: It has already been
19 testified to.

20 THE COURT: I wondered why it was
21 relevant to begin with, but there was no objection
22 to that. It has been something submitted by the

1 State. So I think he has a right to question on
2 it.

3 Q. Was that in plain view on the dining room
4 table?

5 A. Yes, it was. This is the -- you can see the
6 glass table here, this is the formal
7 dining room. They had two kitchen
8 tables. This is the formal dining room.

9 Q. Handing you Defendant's Exhibits 1, 2 and 3,
10 as well as State's Exhibits 91, 93 and
11 94. Do both sets of Exhibits -- do
12 Defendant's Exhibits and State's Exhibits
13 show the same things?

14 A. Yes.

15 Q. What is depicted in those two sets of
16 Exhibits?

17 A. In State's Exhibit 94 and Defendant's Exhibit
18 No. 2, both the same photograph. They
19 show a place mat with a map of the United
20 States and it is attached to the man door
21 that leads from the kitchen to the
22 garage, and the door is in the closed

1 position, and --

2 Q. The door is in the closed position?

3 A. Yes. That man door is closed.

4 Q. At the time those pictures were taken?

5 A. Yes.

6 Q. That place mat in State's Exhibit 94 and
7 Defendant's Exhibit 2, that is on the
8 interior or the kitchen side of the man
9 door, from the garage into the kitchen?

10 A. Yes.

11 Q. I think I'll use this door back here for an
12 example. If this is the kitchen and the
13 Jury room is the garage, are you with me?

14 A. Yes, Sir.

15 Q. When that picture was taken, State's Exhibit
16 94 and Defendant's Exhibit 2, the man
17 door is closed like this?

18 A. Yes.

19 Q. And if the man door was opened like this, you
20 could not take those pictures, correct?

21 A. That is correct.

22 Q. The rest of those Exhibits also show other

1 items on the interior side, the kitchen
2 side of the man door from the garage, do
3 they not?

4 A. Yes. It is a different depth and shows more
5 of the door.

6 Q. And those pictures were taken because there
7 was suspected blood on those items,
8 correct?

9 A. Yes.

10 Q. And those items were in fact or some of those
11 items, the place mat for instance were
12 submitted to BCI for analysis?

13 A. Yes.

14 Q. Handing you number 110, 132, 139 of State's
15 Exhibits. Would you tell us what those
16 are, please?

17 A. State's Exhibit 110 is a photograph taken on
18 December 12, 2001, by Anthony Leshnack,
19 and it shows a -- this picture is taken
20 from a vantage point immediately away
21 from the door, more towards the basement
22 steps towards the man door. To the left

1 side of the photograph, it shows the
2 peninsula here in the kitchen, the
3 victim, and I doubt that you can see it
4 from here, but the door we just spoke of
5 is in the open position and you can make
6 out the door knob here.

7 Q. Keep that one. Maybe we only need that one.
8 Does that fairly and realistically show
9 the location of Mr. Fingerhut's body when
10 you saw the location?

11 A. Yes.

12 Q. Can that door be shut with Mr. Fingerhut lying
13 like that?

14 A. No.

15 Q. So in order to shut the door, somebody had to
16 move Mr. Fingerhut?

17 A. Yes.

18 Q. Just put those aside, we'll get back to them.
19 Handing you State's Exhibits 76 and 92,
20 would you tell us what they depict,
21 please?

22 A. State's Exhibit 92 is a photograph of the

1 Fingerhut residence taken on December 12,
2 2001 by Deputy Anthony Leshnack. This
3 photograph is taken from within the
4 garage of the residence, looking into
5 that man door. You can see into the
6 kitchen where that man door we talked
7 about is standing open. Obviously, Donna
8 Roberts' car has been moved. The body
9 has been moved.

10 Q. Is there a door opened in the garage?

11 A. Yes, there's a screen door that is standing
12 open.

13 Q. That's a screen door?

14 A. Yes.

15 Q. Why don't you pick up that other exhibit?

16 A. State's Exhibit 76.

17 Q. Is that a close-up of the screen door that
18 we're talking about?

19 A. Yes, it is.

20 Q. Is there a hole in that screen door?

21 A. Yes, there is.

22 Q. Is there a circular hole?

1 A. It is kind of an oblong hole.

2 Q. Would you take a look at what has been marked
3 for identification purposes as
4 Defendant's Exhibit 6? Is that a Consent
5 to Search form?

6 A. Yes, it is.

7 Q. Does your name appear on that document?

8 A. Yes, it does.

9 Q. Is that document dated December 17, 2001?

10 A. Yes, it is.

11 Q. So, on the date that document is signed, you
12 have already talked to Donna Roberts on
13 December 12th, you already talked to
14 Donna Roberts on December 15th, correct?

15 A. Yes.

16 Q. I take it from that document that you went to
17 the house on December 17th and asked her
18 permission to remove the screen door that
19 we have just talked about?

20 A. Yes, this form is incomplete though.

21 Q. How is it incomplete?

22 A. There should be more information on the back

1 of it.

2 Q. What kind of information?

3 A. There's some acknowledgment, stuff on the
4 back, a spot for inventory. If I could
5 review my notes, I can produce the
6 original.

7 Q. Can I see the back, please? There's a whole
8 bunch of space here on the back, right?

9 A. Yes.

10 Q. Like details leading to search, law
11 enforcement action, quantity, item, make,
12 model, color, witness, officer, date and
13 time began, date and time ended. Is that
14 right?

15 A. Yes.

16 Q. Is there one bit of writing on the back of
17 that page that you said was incomplete?

18 A. There's no writing on the back.

19 Q. There's no writing at all?

20 A. No.

21 Q. For all intents and purposes, Defendant's
22 Exhibit 6 is in fact complete?

1 A. The front of it, yes.

2 Q. Well, there's no writing on the back. Did you
3 write one word on the back of the Consent
4 to Search form that you got on December
5 17, 2001?

6 A. No, Sir.

7 Q. But even though you didn't bother to write one
8 word, you still want us to believe that
9 it is incomplete?

10 A. Well, you asked me if this was an accurate
11 copy of the form and I told you, no, it
12 was not, because it is not a complete and
13 accurate copy of the form.

14 Q. Okay. Did you ask her for her consent to take
15 the door?

16 A. Yes, I did.

17 Q. Did you tell us yesterday that she was
18 uncooperative with you, by the way?

19 A. Yesterday.

20 Q. When you testified and talked to Mr. Becker
21 yesterday, did you tell us that she was
22 uncooperative?

1 A. Yes.

2 Q. In her uncooperative fashion, did she tell you
3 to, "Go pound salt, you are not getting
4 my storm door"?

5 A. No, she did not.

6 Q. She gave you her storm door?

7 A. Yes.

8 Q. Is that uncooperative to you?

9 A. That line, no.

10 Q. What did you do with that storm door?

11 A. We examined the door.

12 Q. Who is "we"?

13 A. Myself, other detectives took a closer look at
14 it.

15 Q. Send it to BCI?

16 A. No.

17 Q. Who were the other detectives?

18 A. Detective Dillon, Detective Compton.

19 Q. Did Dillon -- this guy that has been sitting
20 here throughout this trial and testified
21 a little bit ago -- he helped you look
22 and examine that door?

1 A. Yes.

2 Q. I didn't say helped you remove it. Did he
3 help you examine it?

4 A. I believe that he did.

5 Q. Do you remember or not?

6 A. Am I certain? No.

7 Q. From now on, please don't tell us anything
8 you're uncertain of.

9 A. Okay.

10 Q. You told us yesterday that in the headboard of
11 the master bedroom, you found some
12 personal documents belonging to Donna and
13 Mr. Fingerhut. Do you recall that?

14 A. Yes.

15 Q. And I believe you said that on top were two
16 life insurance policies?

17 A. Yes.

18 Q. You would agree with me, wouldn't you, that
19 something has to be on top?

20 A. Yes.

21 Q. Did you learn that Mr. Fingerhut was
22 contemplating increasing the amount of

1 his life insurance?

2 A. Yes.

3 Q. Do you know who last handled those documents,
4 Mr. Fingerhut or Donna Roberts?

5 A. No.

6 Q. Did you submit them for fingerprint analysis
7 to perhaps assist you in making that
8 determination?

9 A. No.

10 Q. I'm going to hand you what has been marked as
11 State's Exhibits 8, 9, 110, 132 and 139.
12 Just sort of look at them collectively.
13 Are there supposed to be footprint type
14 impressions in blood in those Exhibits?

15 A. Are they supposed to or are there?

16 Q. Are there?

17 A. Yes.

18 Q. Which ones?

19 A. State's Exhibit 139, State's Exhibit 9,
20 State's Exhibit 8, State's Exhibit 132
21 and State's Exhibit 110.

22 Q. Are we talking about one footprint, one

1 impression or more than one impression?

2 A. More than one.

3 Q. Is there in your opinion, is there a footprint
4 impression shown in State's Exhibit 8?

5 A. Yes.

6 Q. And would that be right here? (Indicating)

7 A. It looks like there's part of an impression
8 here and down in here and over here. To
9 say it is one full shoe, I couldn't say.

10 Q. These are, quoting you, impressions inside of
11 the kitchen?

12 A. Yes.

13 Q. And that is Exhibit 8. Do you know of any
14 other photographs other than State's
15 Exhibit 8 that show impressions inside of
16 the kitchen?

17 A. I can look through them.

18 Q. Maybe when we get to a break, I'll give you
19 that opportunity. Now, State's Exhibits
20 132, 110, 139 and 9, do they in your
21 opinion show an impression?

22 A. Yes.

5992

1 Q. That impression is not inside of the kitchen,
2 correct?

3 A. Actually both. There is on the step and if
4 you look up here, there's a difference
5 between the blood drops, these droplets,
6 and if you look closely here on this tile
7 here.

8 Q. So 139 shows impressions both on the step
9 coming in from the garage, correct?

10 A. Yes.

11 Q. And inside of the kitchen?

12 A. Yes.

13 Q. That would be the same for State's Exhibit 9?

14 A. No. You can't see the step.

15 Q. Nine only shows the impression on the step?

16 A. Yes.

17 Q. What is State's Exhibit 125?

18 A. State's Exhibit 125 is a photograph taken
19 December 12, 2001 by Deputy Anthony
20 Leshnack in the Fingerhut home. It
21 depicts an oblong hole just above -- you
22 see some spot down here at the bottom.

5993

1 It is actually a Cleveland Indians flag.

2 Q. What is to the right of that hole?

3 A. It is a photographic rule.

4 Q. Like a ruler?

5 A. Yes.

6 Q. This kind of ruler?

7 A. It is similar to that, yes.

8 Q. A ruler is a ruler is a ruler, isn't it?

9 A. Yes.

10 Q. And with State's Exhibit 125, you wanted to
11 show the size of something, so you put a
12 ruler next to it and you took a picture
13 of it?

14 A. Yes.

15 Q. Are there any photographs with a ruler next to
16 these footprint impressions?

17 A. No.

18 Q. Were they measured by anyone?

19 A. Not that I know of.

20 Q. Did you instruct anyone to measure them?

21 A. No, I did not.

22 Q. Did you personally measure them?

1 A. No, I did not.

2 Q. And you are the Detective in charge here,
3 weren't you?

4 A. Yes, Sir.

5 Q. And if someone measured them and made note of
6 those measurements, they would bring
7 those measurements to your attention,
8 would they not?

9 A. Should have been turned in to me, Sir.

10 Q. And nothing like that has ever happened?

11 A. No.

12 Q. As far as you know, no one ever measured?

13 A. Correct.

14 Q. When you went back on the 17th to get the
15 storm door, was all of the blood cleaned
16 up?

17 A. Yes.

18 Q. Are you certain of that?

19 A. Yes.

20 Q. Mr. Fingerhut had two wallets and in one of
21 those wallets he had \$231, correct?

22 A. Sounds about right, but I would have to lock

1 at the inventory form. I can give you an
2 exact number. Yes, that is correct.

3 \$231, left rear pocket, black wallet.

4 Q. And he had a 130 some -- if you turn the page
5 over, 130 some in his front pocket?

6 A. \$130 in his front right pocket.

7 Q. And in addition to money, Mr. Fingerhut had
8 gold jewelry on or about his person, did
9 he not?

10 A. Yes, he did.

11 Q. Appeared to be expensive jewelry, 14 carat
12 gold?

13 A. I'm not up on jewelry, but he had a lot of
14 jewelry on.

15 Q. When Donna Roberts left 254 Fonderlac, she was
16 not a suspect, correct?

17 A. No, she was not.

18 Q. And you had no reason to believe that that red
19 Chrysler in the garage was in any way
20 tied or linked to this offense, correct?

21 A. Correct.

22 Q. But once she left, she didn't tell you she

1 wanted to take that car with her, did
2 she?

3 A. No, she did not.

4 Q. She didn't tell you she needed transportation?

5 A. No, she did not.

6 Q. Did you have legal authority to stop her from
7 taking that car if she wanted to take it?

8 A. Without thinking it was part of the crime, no.

9 Q. That is right?

10 A. No.

11 Q. If she wanted to take that car, that car would
12 have went with her, correct?

13 A. Probably.

14 Q. And that is the same car you told us you found
15 these letters in the trunk?

16 A. Yes.

17 Q. And then you told us you found letters in the
18 drawer in the master bedroom?

19 A. In an armoire.

20 Q. What does that mean?

21 A. It is a cabinet. It has some shelves in it,
22 also some drawers.

1 Q. Was it in a drawer within this armoire?

2 A. It was in the cabinet, yes.

3 Q. Was it a secret cabinet?

4 A. No, it is not a secret cabinet. It is a piece
5 of furniture.

6 Q. It is not a hidden cabinet?

7 A. No.

8 Q. When you open it, this stuff stares you in the
9 face?

10 A. No.

11 Q. Was it with underwear?

12 A. Yes.

13 Q. It is in an underwear drawer?

14 A. It is laying on a shelf. All kind of packed
15 in there.

16 Q. In an underwear shelf?

17 A. I guess that is what you would call it.

18 Q. When you go visiting, you take underwear with
19 you, you go visiting?

20 A. Yes.

21 Q. When she left, do you know if she went in
22 there to take underwear with her?

1 A. I don't know what she took with her.

2 Q. And if she had taken these letters, you
3 wouldn't have known that, would you?

4 A. No.

5 Q. Did you and I discuss previously that she left
6 there at an approximate time, a ballpark
7 time, and I'm not trying to pin you down
8 here, I'm not trying to be tricky, around
9 2:00?

10 A. 2:00, 2:30, somewhere in that area.

11 Q. And you left at 6:30?

12 A. Yes.

13 Q. And you managed to get a couple of hours
14 sleep?

15 A. Yes.

16 Q. Then at about 10:00 the next morning, you and
17 a fellow officer, Captain Compton -- is
18 it Captain?

19 A. Yes.

20 Q. I have got to get these ranks right. At 10:00
21 in the morning, you and Compton drive to
22 Donna Roberts' house?

1 A. Yes.

2 Q. And the purpose of that trip is to get a
3 written Consent to Search signed?

4 A. Yes.

5 Q. She had already given you carte blanche
6 authority to search before?

7 A. Yes.

8 Q. But this time you wanted to get it in writing?

9 A. Yes.

10 Q. Did you have any difficulty locating her at
11 10:00 in the morning?

12 A. No, Sir.

13 Q. She didn't pull a Mr. Koliser on you and get
14 in the car and drive to Florida now, did
15 she?

16 A. No, she did not.

17 Q. She told you she would be at her brother's,
18 you called her at her brother's and she
19 told you to come on up?

20 A. Yes.

21 Q. When you arrived, she was on the couch?

22 A. Yes.

6000

1 Q. She appeared tired to you?

2 A. Yes.

3 Q. And you explained to her that you wanted to
4 continue searching the house and the
5 vehicles?

6 A. Yes.

7 Q. But you didn't have both vehicles at this
8 time, correct?

9 A. No, I did not.

10 Q. Sort of a contingency plan, if we find the
11 silver one, we want to search it, too?

12 A. We were going to search it, yes.

13 Q. So, you are going to ask her for a written
14 consent to continue searching 254
15 Fonderlac, correct?

16 A. Yes.

17 Q. Written consent to continue searching the red
18 Chrysler, correct?

19 A. Yes.

20 Q. And written consent to search the silver
21 Chrysler when and if you find the silver
22 Chrysler?

6001

1 A. Yes.

2 Q. And again, even though you found her
3 uncooperative, she didn't tell you to go
4 pound salt, get out of here?

5 A. No, she did not.

6 MR. BECKER: I'm going to object.
7 He covered this. You are talking about the
8 consent?

9 MR. INGRAM: This is the different
10 consent. This is 12-12, the other one is 12-17.

11 THE COURT: Which one are you
12 talking about?

13 MR. INGRAM: The one on December
14 12th.

15 THE COURT: He's already asked the
16 question once about whether there was a written
17 consent, true.

18 MR. BECKER: I'll withdraw.

19 Q. And is Defendant's Exhibit 5 the written
20 consent that Donna Roberts gave you on
21 December 12th?

22 A. Yes, it is a copy of that.

6002

1 Q. And while you were talking with her on
2 December 12th at Ralph and Rita Roberts'
3 house, you found her very cooperative,
4 did you not?

5 A. In regards to this consent, yes.

6 MR. INGRAM: This would be a
7 convenient time for a break, if we could. I would
8 like the Detective to look and see if he can find
9 pictures that better show the impressions, plus it
10 is quarter to three.

11 THE COURT: Okay. Let's take a 15
12 minute break. Remember my admonition about talking
13 about the case in the meantime.

14 (Court in Recess at 2:45 p.m.)

15 (Resumed in Open Court at 3:05 p.m.)

16 Q. One final question about the December 12, 2001
17 Consent to Search that is signed by Donna
18 Roberts at about 10:30 that morning.

19 A. Yes, Sir.

20 Q. I take it that after Defendant's Exhibit 5,
21 the Consent to Search is executed, and
22 you asked Donna to come to the Howland

6003

1 Police Department at 1:00?

2 A. Yes.

3 Q. When you and Captain Compton proceeded to the
4 Roberts' residence, did you leave from
5 the Howland Police Department to go
6 there? I'll withdraw the question. Do
7 you have any idea or can you approximate
8 for us please, how long it takes to drive
9 from the Howland Police Department to the
10 Roberts' residence?

11 A. Two minutes.

12 Q. They live in Austintown?

13 A. I thought you meant Donna Roberts.

14 Q. When Defendant's Exhibit 5, the Consent to
15 Search was signed, Donna is at Ralph and
16 Rita's house in Austintown, correct?

17 A. Yes.

18 Q. That is about a half hour drive?

19 A. Yes.

20 Q. And she was tired when you were at Ralph and
21 Rita's to have the document signed?

22 A. Yes, she was.

6004

1 Q. So you asked her to come to the police
2 department at 1:00 and that certainly
3 doesn't leave much time for rest in
4 between, does it?

5 A. No, it doesn't.

6 Q. And again, even though she was uncooperative,
7 she showed up at the Howland Police
8 Department at 1:00, didn't she?

9 A. Yes.

10 Q. Didn't have to, did she?

11 A. No.

12 Q. Who was present at the Howland Police
13 Department for that interview with Donna
14 Roberts on December 12, 2001, at 1:00
15 p.m.?

16 A. Donna Roberts, myself, Detective Dillon,
17 Captain Compton.

18 Q. All three of you are there?

19 A. In the interview room?

20 Q. Yes.

21 A. It was a conference room, yes.

22 Q. All three of you were in the conference room?

6005

1 A. Yes.

2 Q. Did only one of you ask questions or did all
3 three of you ask questions?

4 A. I asked the majority of the questions.

5 Q. If you asked the majority, that necessarily
6 implies that someone else asked the
7 minority?

8 A. Yes, Sir.

9 Q. Both Captain Compton and Detective Dillon?

10 A. Captain Compton asked a few questions.
11 Detective Dillon asked more than Compton.
12 I asked the majority of the questions.

13 Q. All told, how long did this interview take
14 would you guess?

15 A. Could I look at my notes?

16 Q. Feel free.

17 A. The report doesn't indicate what time she
18 concluded or we concluded the interview,
19 but I would say roughly about an hour,
20 hour and a half.

21 Q. And you told us yesterday that at the end of
22 the interview, Donna put her head down

6006

1 and said that she's too tired to
2 continue. Do you recall telling us that?

3 A. Yes, Sir.

4 Q. When she did that, that wasn't a permanent
5 termination, "I am never talking to you
6 again," correct?

7 A. Correct.

8 Q. What she said is, "I am too tired and I'll
9 make myself available after I have had an
10 opportunity to get some rest"?

11 A. Yes.

12 Q. And in fact, during that hour or hour and a
13 half interview, she appeared to be very
14 tired to you, did she not?

15 A. Yes.

16 Q. Throughout the entire interview?

17 A. Yes.

18 Q. Was that interview tape recorded?

19 A. No.

20 Q. Did you ask Donna for permission to tape the
21 interview?

22 A. This one?

6007

1 Q. The one on 12-12-01 at 1:00 p.m.

2 A. No, Sir.

3 Q. You do have tape recorders at the Howland
4 Police Department, do you not?

5 A. Yes, we do.

6 Q. And she had never said "no" to any request you
7 had made previously, correct?

8 A. Correct.

9 Q. But you didn't ask her to tape record that
10 conversation?

11 A. No, I did not.

12 Q. And you and/or Detective Dillon took written
13 statements from a whole slew of witnesses
14 in this case, did you not?

15 A. Yes, we did.

16 Q. On December 12, 2001, did you ask Donna
17 Roberts for a written statement?

18 A. No.

19 Q. Did one of the three, either you, Detective
20 Dillon or Captain Compton act as
21 recording secretary, so to speak, during
22 this interview? By that I mean was it

6008

1 someone's responsibility to take notes?

2 A. I took notes and Detective Dillon took notes,
3 but as far as saying, "Attorney Ingram,
4 it is your job, you are taking notes,"
5 no.

6 Q. So you and Detective Dillon took some
7 handwritten notes?

8 A. Yes, Sir.

9 Q. And are those handwritten notes in that
10 notebook?

11 A. No, they are not.

12 Q. Where are those handwritten notes today?

13 A. They were destroyed.

14 Q. When were they destroyed?

15 A. Upon completion of this report, they are
16 destroyed.

17 Q. Later that day, the silver Chrysler is
18 recovered?

19 A. Yes.

20 Q. Not from 79 Wirt Street, correct?

21 A. 791 Wirt.

22 Q. Excuse me. How far?

1 A. About three blocks.

2 Q. Who lives at that Wirt Street address?

3 A. Sheila Fields and Oscar. Without going
4 through some records, I'm not sure what
5 Oscar's last name is.

6 Q. That is good enough. That is in fact where
7 Nate Jackson was assessed on December
8 20th, 21st, when he was arrested?

9 A. Yes.

10 Q. And that is the same address where the gloves
11 you talked about with Mr. Becker were
12 found?

13 A. Yes.

14 Q. And that is the same address where the tennis
15 shoes you talked with Mr. Becker were
16 found?

17 A. Yes.

18 Q. So after that car is found, what becomes of
19 it?

20 A. After the car was found, we called a tow
21 company, had it towed. We had Majors
22 Towing come to the scene at the corner of

6010

1 Victoria and Pershing in Youngstown. We
2 followed the tow truck directly back to
3 Howland Police Department. We put it in
4 our garage there. Disconnected the power
5 to the overhead door, put evidence seals
6 upon the doors to get into the garage, to
7 keep anybody from entering the garage.

8 Q. Do you do anything with that car while it is
9 in the garage?

10 A. That night? No.

11 Q. How about ever?

12 A. Yes.

13 Q. What?

14 A. We made arrangements with the Bureau of
15 Criminal Identification and Investigation
16 in Richfield to have them process the
17 vehicle for evidence. Prior to having it
18 transported there on a flat bed truck,
19 there was a chemical which was applied to
20 that exterior of the vehicle in case
21 there would be fingerprints on the car.
22 It was raining and I don't know what the

1 chemical is called.

2 Q. You protected it so that any fingerprint
3 evidence on the exterior of the vehicle
4 would not be ruined?

5 A. Yes. It hardens the prints that may be found,
6 if found, if you are out in a moisture
7 environment.

8 Q. Who inventories the contents of this vehicle?

9 A. Myself, Detective Leshnack, Cindy Mayle.

10 There was another BCI technician there, I
11 don't know what his name was at the lab.

12 Q. She testified here yesterday, she's a
13 fingerprint person?

14 A. Yes, Sir.

15 Q. And there was -- was there another BCI person
16 present?

17 A. Dale Laux was there, also.

18 Q. What does he do?

19 A. He works in serology.

20 Q. He's a blood guy?

21 A. Yes, Sir.

22 Q. So there's a bunch of you from the local

1 police agency is here?

2 A. Yes.

3 Q. And then there's a fingerprint person and a
4 blood person from BCI?

5 A. Yes.

6 Q. Anyone else?

7 A. I don't think there was anybody else in the
8 garage.

9 Q. And is that when the contents of the car are
10 removed and inventoried?

11 A. Yes.

12 Q. Do you recall when that car was sent to BCI?
13 Let me give you the BCI submissions. I
14 believe it is the second page.

15 A. On December 14, 2001.

16 Q. Everything is taken out of the car and
17 itemized. That is one task, correct?

18 A. Yes.

19 Q. Cindy Mayle then does her thing with checking,
20 I would imagine both the interior, the
21 exterior of the vehicle, for
22 fingerprints?

1 A. Yes. I didn't participate in that.

2 Q. You were not there?

3 A. Not when she did that stuff.

4 Q. What was done to this car when you were there?

5 A. The loose contents in the vehicle, clothing
6 items, anything that would be laying in
7 the car were removed. Things that were
8 easy to take out. That is what was done
9 while I was there. As far as them
10 actually lifting fingerprints from the
11 car or taking blood samples from the car
12 or collecting any kind of trace evidence
13 or such, I didn't participate in that
14 collection.

15 Q. Does that mean you weren't there when it
16 occurred?

17 A. Yes.

18 Q. Was that car measured when you were there?

19 A. Yes.

20 Q. By whom?

21 A. I don't know.

22 Q. What was measured?

6014

1 A. I think they were measuring damage on the rear
2 bumper of the car.

3 Q. Do you have a report that shows that anywhere?

4 A. There's a photograph. I don't have a report
5 that I wrote as far as measurements.

6 Q. There's a photograph of somebody measuring the
7 car?

8 A. The photographs with measurements that were
9 being taken.

10 Q. Do you know where that photo would be?

11 A. I know where my photos are. Without going
12 through their stuff, no.

13 Q. These guys are going to look -- we'll come
14 back to that. You have no written report
15 about these measurements?

16 A. No, Sir.

17 Q. Let's go back to December 11th, between the
18 time you got to 254 Fonderlac and the
19 time you left. Were any measurements
20 taken of anything except for this bullet
21 hole in the stairwell going down to the
22 basement?

1 A. Yes.

2 Q. What?

3 A. Detective Leshnack took measurements. He took
4 measurements to make a drawing of the
5 residence.

6 Q. Okay. And we have seen that drawing?

7 A. Okay.

8 Q. Are there any photographs showing any items of
9 evidence being measured, other than that
10 bullet hole in the stairwell?

11 A. I don't know.

12 Q. BCI took measurements of the car, but never
13 sent you a written document setting forth
14 what those measurements are?

15 A. No.

16 Q. Were any measurements taken on December 11,
17 2001 inside the garage?

18 A. I didn't participate. I would have to assume,
19 and I am guessing, I wouldn't say
20 guessing --

21 Q. You shouldn't guess. You don't know if there
22 were any measurements taken inside that

1 garage or not?

2 A. No. You would have to ask Detective Leshnack.

3 Q. While you were at 254 Fonderlac, do you recall
4 anybody taking a yard stick and holding
5 it up to the garage door to measure the
6 damage on the garage door from the
7 ground?

8 A. No.

9 Q. That was not done, correct?

10 A. I didn't say it wasn't done. I don't recall
11 anybody doing it.

12 Q. You are the Detective in charge?

13 A. Yes, Sir.

14 Q. You got two big notebooks. You got an Army of
15 police officers to help?

16 A. No.

17 Q. Do you have a report that shows that anybody
18 measured that door?

19 A. I don't think so.

20 Q. You don't think so. Do you want to take some
21 time to look through the books?

22 A. I would like to look through Detective

1 Leshnack's report and see what is there.

2 Q. Go ahead.

3 A. To answer your question, it appears from
4 looking at this drawing, that there were
5 measurements taken. I'm not certain --
6 it shows bracket, measuring the bracket
7 here and the different dimension.

8 Q. Can you interpret those measurements or would
9 we need Deputy Leshnack to do that? Can
10 you tell me when he's measuring where the
11 bracket is on the floor or the height of
12 where the bracket is supposed to be on
13 the door?

14 A. It appears that the broken bracket on the
15 floor, he's triangulating from point A
16 one and point B one to determine position
17 on the floor.

18 Q. He's trying to show you where, if this pen is
19 the broken bracket, I really hate that I
20 dropped that pen, it reminds me of
21 Mr. Bailey, if this pen is the bracket on
22 the floor, his measurements are designed

1 to show you where on the floor that
2 bracket is located?

3 A. Yes.

4 Q. That's not what I am talking about.

5 A. Okay.

6 Q. I am talking about measurements from the floor
7 up to show where on the door there's
8 damage. There's no measurements like
9 that, are there?

10 A. I don't see that, no.

11 Q. When was the last time you inspected the
12 damage to that door?

13 A. December 12th.

14 Q. Before you left at 6:30?

15 A. I would say when we came back.

16 Q. When did you go back to the house on December
17 12th? At 10:00, you are at Ralph and
18 Rita Roberts. At 1:00 you are at the
19 Howland Police Department. You are
20 recovering the silver Chrysler later on.
21 Do you go back to the house on December
22 12th?

6019

1 A. It was a busy day.

2 Q. I understand that, Sir.

3 A. Yes, I did.

4 Q. What time?

5 A. 1400 hours.

6 Q. That is 2:00. I thought you were talking to
7 her?

8 A. That is what it says.

9 Q. Something is not kosher. Would you agree with
10 that?

11 A. Well, Detective Leshnack says --

12 Q. You can't use Detective Leshnack's notes to
13 refresh your own recollection. You are
14 free to tell us -- go ahead, do it. Use
15 it all you want. Does Leshnack say you
16 went to the house with him?

17 A. He doesn't mention my name.

18 Q. He went there on the 12th. Do you remember
19 whether you were with him?

20 A. I remember being with him.

21 Q. Do you remember taking measurements on the
22 12th?

1 A. No, I do not.

2 Q. Isn't that what he did on the 12th?

3 A. He collected additional blood stain evidence,
4 fingerprint evidence. Measurements were
5 taken while we were there. He collected
6 a place mat that we discussed that was on
7 the back of the door.

8 Q. I am sort of lost here. While he's there on
9 the 12th, are you with him or not?

10 A. Yes, I must have been with him.

11 Q. You must have been with him?

12 A. Yes, Sir.

13 Q. Do you have a recollection of being with him
14 or are you assuming that you were there?

15 A. I was with Leshnack when we went back there.

16 Q. How many times did Leshnack go back there, do
17 you know?

18 A. Twice.

19 Q. Were you with him both times or one time?

20 A. Both times.

21 Q. So if he measured the damage to this door from
22 the ground up, you would have been there

6021

1 when he did it unless he went there three
2 times?

3 A. No, I was there at the residence. Actually he
4 was there three times and I went there
5 with him every time he went back there.
6 To say I was personally standing by his
7 side, no.

8 Q. But you have no recollection of any such
9 measurements ever being taken?

10 A. No, Sir.

11 Q. Let me tell you the reason why I'm asking all
12 of these questions. You previously
13 testified that the damage to the rear
14 bumper of the silver Chrysler --

15 MR. BECKER: I'm going to object to
16 him telling something. If he's got a question, I
17 think he can ask it.

18 THE COURT: Sustain the objection.
19 Rephrase your question.

20 Q. Did you ever make an effort to match the
21 bumper or damage to the bumper with the
22 damage to the door?

6022

1 A. Did I take the car back and put it next to the
2 damage on the door? No, I did not.

3 Q. Did you ever make any effort whatsoever to
4 match the damage on the silver Chrysler
5 to the damage on the garage door at 254
6 Fonderlac?

7 A. I looked at them. Yes, we took photographs
8 and measurements of the bumper damage.

9 Q. Is it your opinion that they match?

10 A. Yes, it is.

11 Q. You matched them from photographs?

12 A. I think if you look at the photographs of the
13 damage and the photographs of the damage
14 to the car, it appears that it is
15 consistent with the damage to the garage
16 door.

17 Q. Consistent?

18 A. Yes.

19 Q. Consistent wouldn't be an identical match now
20 would it?

21 A. No.

22 Q. Did you testify under oath previously that it

1 was an identical match?

2 A. If I can look at my testimony.

3 Q. You sure can. Do you recall testifying in
4 another proceeding on October 21, 2002?

5 A. Yes, was that in a trial?

6 Q. Yes.

7 A. Whose trial?

8 Q. Mr. Jackson's trial.

9 A. Yes.

10 Q. You were sworn to tell the truth?

11 A. Yes.

12 Q. Take a gander at page 164, lines ten through
13 15.

14 A. Do you want me to read this to you?

15 Q. Do you say there that it is an identical
16 match?

17 A. Yes.

18 Q. That was sworn testimony under oath, correct?

19 A. Yes.

20 Q. And today you are telling us that that is not
21 accurate testimony? Answer my question.

22 A. Yes, show me the photographs of the car and

6024

1 that, and I'll compare it and I'll tell
2 you it is identical.

3 Q. Didn't you just tell it was consistent but not
4 identical? Do you want to change your
5 testimony here, too?

6 A. You are not showing me anything to look at
7 here, Sir.

8 Q. I'm showing you your written testimony. And
9 by the way, comparing something from a
10 photograph to a photograph, what
11 scientific methodology is that? Do you
12 know what tool mark analysis is?

13 A. Yes.

14 Q. Did you ask anyone from BCI to do a tool mark
15 analysis?

16 A. No.

17 Q. Tell the Jury what tool mark analysis is.

18 A. Tool mark analysis is when you look at
19 impressions that may be left from say a
20 screwdriver sliding across a piece of
21 metal, which may leave unique marks
22 specific to that tool, and if you were

1 able, if there was a useful purpose for
2 doing it, you may want to look at that
3 screwdriver under a stereo scope and if
4 possible, if you could lift the
5 battleship into the lab or take a look
6 where they scraped the metal and you
7 could see that screwdriver caused that
8 scratch.

9 Q. Do you have training in tool mark analysis?

10 A. No, I do not.

11 Q. Did you ask BCI to do tool mark analysis?

12 A. No.

13 Q. From your understanding, can you do tool mark
14 analysis from one photograph to another
15 photograph?

16 A. I would say if you had a good enough
17 photograph, you could do that.

18 Q. You can determine scrapes from a photograph?

19 Okay. By the way, are you as certain of
20 the rest of your testimony as you are
21 about this testimony regarding the bumper
22 and the door?

1 A. Yes. It would be helpful if you would show me
2 the evidence.

3 Q. There's the box. Come down and take all of
4 the time you want and find as many
5 photographs as you want. I'll take a
6 seat.

7 A. Could I see your photographs?

8 Q. I don't have photographs.

9 MR. BECKER: I want to say for the
10 record, they have all of the photographs that the
11 State has. Some of these photographs are contained
12 in a compact disk. Now I want to point out for the
13 record, that not all of the printed photographs are
14 here in the Courtroom today. If we want to break
15 for the day and go get those from the Howland
16 Police Department, we can do that.

17 THE COURT: Let me ask you this.

18 MR. INGRAM: We don't have to do
19 that. I'll withdraw.

20 MR. BECKER: I don't want it implied
21 that the State is hiding something.

22 MR. INGRAM: If Mr. Becker or anyone

1 else interpreted anything that I said as the fact
2 that the State has hidden photographs, they have
3 not. We have these photographs.

4 MR. BECKER: They are on a media
5 that is on compact disk.

6 MR. INGRAM: I am computer
7 illiterate, and that is neither here nor there.

8 Q. But you testified in one trial they are an
9 identical match, right?

10 A. Yes.

11 Q. You testified in this trial, they are
12 consistent?

13 A. Yes, they are.

14 Q. That testimony is not the same, is it?

15 A. You are mixing and matching words.

16 Q. You again talked to Donna Roberts on December
17 15, 2001?

18 A. Yes.

19 Q. And this time she actually requests a
20 conference, doesn't she?

21 A. Yes.

22 Q. And before this particular interview, you

1 inform her of her rights?

2 A. Yes.

3 Q. So you told her she didn't have to talk to
4 you, correct?

5 A. Correct.

6 Q. She indicated she's happy to talk to you and
7 matter of fact, she wanted to talk to
8 you, that is why she requested the
9 interview?

10 A. Yes.

11 Q. You told her she could stop answering
12 questions at any time?

13 A. Yes.

14 Q. And she never did that, she answered each and
15 every question that you put to her,
16 didn't she?

17 A. Are you asking my opinion?

18 Q. Did she answer your questions? Did she ever
19 refuse to answer a question?

20 A. No.

21 Q. Now all told on December 12th and December
22 15th, you spent more than six hours

1 talking to Donna Roberts, correct?

2 A. I'm not certain.

3 Q. How much time do you think you spent talking
4 to her?

5 A. As you set these rules up, we started the
6 trial, you asked me to be specific and
7 exact, you testified or told me that I
8 spent six hours, I would say that is
9 probably close. But to say I spent
10 exactly six hours, I'm not going to say
11 that based on the rules you wanted to set
12 up, Sir.

13 Q. I set up rules that you had to be exact?

14 A. You said --

15 Q. Don't speculate, you're right. Did you talk
16 to her about six hours?

17 A. Yes.

18 Q. And in the six hours of conversation she had
19 with you, she never refused to answer any
20 question you put to her, did she?

21 A. No.

22 Q. And the conversation you had with her on the

1 15th, that is in and of itself lasted
2 about two and a half hours, doesn't it?

3 A. Yes.

4 Q. And after that two and a half hour
5 conversation is over, you ask her to go
6 back to Fonderlac, so that you can put
7 recording equipment on the phone and ask
8 her to call Nate Jackson?

9 A. Yes.

10 Q. And even though she's uncooperative, she
11 agrees to do that?

12 A. Yes.

13 Q. And she places the call to Tausha on the 15th?

14 A. Yes, she did.

15 Q. And that call is monitored by the police, by
16 you or someone else, correct?

17 A. Yes, it was.

18 Q. And Nate was not there?

19 A. No. Well, we were told he wasn't there.

20 Q. So, does Donna agree to try again the next
21 day?

22 A. Yes.

1 Q. And does she go back the next day?

2 A. Yes.

3 Q. Again, even though she's being uncooperative
4 with you, she's voluntarily doing these
5 things. You can't make her make these
6 telephone calls, can you?

7 A. No, I can't.

8 Q. Now, I believe you testified yesterday that in
9 making the call, she didn't follow the
10 script?

11 A. That is right.

12 Q. She was able to get Nate Jackson on the phone,
13 was she not?

14 A. Yes.

15 Q. And have you ever tried to carry on an
16 important telephone conversation while
17 someone in the same room with you is in
18 your ear trying to tell you what to say?
19 That ever happen to you?

20 A. All the time.

21 Q. It is not an easy thing, is it?

22 A. Not that hard.

1 Q. Not for you perhaps. And when you are
2 pointing at this script?

3 MR. BECKER: I'm going to object to
4 the comments.

5 THE COURT: The Jury will disregard.

6 MR. INGRAM: I'll withdraw it.

7 Q. When you are pointing at the script, is she
8 holding the script like this?

9 (Indicating)

10 A. No, Sir.

11 Q. Would you know if she's farsighted or
12 nearsighted?

13 A. No, Sir.

14 Q. Earlier that day on the 16th did you accompany
15 Detective Dillon to the Days Inn? If you
16 need a report, I can find it.

17 A. Was that Sunday?

18 Q. December 16.

19 A. Yes, I did.

20 Q. You have it there?

21 A. I don't have a report in front of me, but I
22 remember going to the Days Inn.

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1 Q. You already have it, that is the report?

2 A. Yes.

3 Q. And is that when you are given the documents
4 that have been marked State's Exhibit
5 311?

6 A. Yes.

7 Q. What is number 311-E?

8 A. 311-E is a carbon copy of a receipt dated
9 December 16, 2001, 7:31 and 29 seconds.

10 Q. Is that a.m.?

11 A. It is a.m.

12 Q. It is in the amount of eight dollars and no
13 cents?

14 A. Yes.

15 Q. That generated while you guys were there to
16 take these telephone calls delineated in
17 311-D?

18 A. These were given to us on that date.
19 Detective Dillon collected them.

20 Q. Okay. We'll rely upon Detective Dillon's
21 testimony in that respect. However
22 311-E --

1 A. Okay.

2 Q. At 7:30 in the morning?

3 A. Yes.

4 Q. What time were you guys there?

5 A. 3:10 in the afternoon.

6 Q. Will you put all of those back in there? The
7 next day is the 17th, that is the day you
8 go and remove the storm door?

9 A. Yes.

10 Q. Do you enter the house on December 17th?

11 A. I don't know.

12 Q. You go back to the house on the 18th, don't
13 you?

14 A. Yes, I did.

15 Q. And at this time you go with Major Phillips?

16 A. Yes.

17 Q. And I have been waiting to do this. You go
18 with this good looking guy over here,
19 Gary Bacon. I promised him I would call
20 him "good looking".

21 A. Yes, Sir.

22 Q. And you guys go there to gather evidence, to

6035

1 process the scene or what do you go there
2 for?

3 A. We go there to get a confession.

4 Q. Does Donna invite you in?

5 A. Yes.

6 Q. Didn't have to let you in, did she?

7 A. No.

8 Q. She then leaves?

9 A. Yes.

10 Q. When she leaves, did you cause Captain Bacon
11 to stop her car and search her car
12 looking for Nate Jackson?

13 A. No.

14 Q. Do you know if that happened?

15 A. Yes.

16 Q. Her car was stopped?

17 A. Yes.

18 Q. For some offense?

19 A. I wasn't there when that happened.

20 Q. Was the car searched? They are looking for
21 Nate Jackson?

22 A. I don't know if they searched it or not.

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1 Q. You do know that Nate Jackson was not in the
2 car?

3 A. Yes.

4 Q. Now Donna is arrested on the 20th?

5 A. Yes.

6 Q. And even after she's arrested, she agrees to
7 go back to 254 Fonderlac and try to get
8 Nate Jackson on the telephone, correct?

9 A. Yes.

10 Q. She's actually transported --

11 MR. BECKER: Can I have one second?

12 MR. INGRAM: Sure.

13 MR. BECKER: May we approach?

14 (SIDE BAR DISCUSSION, OFF THE RECORD AND
15 OUT OF HEARING)

16 MR. BECKER: We'll withdraw the
17 objection.

18 Q. She once again agreed to call Nate Jackson?

19 A. Yes.

20 Q. She gets him on the phone?

21 A. Yes.

22 Q. This time he's at 791 Wirt, Sheila and

1 Oscar's?

2 A. Yes.

3 Q. When she's on the phone with him, the police
4 go to the house and arrest him?

5 A. Yes.

6 Q. On December 21st of 2001, Detective Tackett
7 turns over to Detective Dillon, at least
8 he signs or he writes the report, that on
9 December 21st, some gloves and some
10 tennis shoes correct?

11 A. Yes.

12 Q. You want to go to the report? You seemed
13 hesitant.

14 A. The reason I'm hesitant, if you want me to be
15 precise without looking, it sounds like
16 what we would have done. Detective
17 Yannucci collected the gloves. Detective
18 Tackett collected the shoes. The
19 officer -- did Officer Tackett give it to
20 Dillon? Did I know that for sure? Yes,
21 we did get that item of evidence.

22 Q. Can you tell me for sure you got the gloves

1 and the tennis shoes on December 21st?

2 A. Yes.

3 Q. Now you testified yesterday that the shoes,
4 State's Exhibit 318, that those were not
5 sent to BCI at all?

6 A. No, they were sent to BCI.

7 Q. My question to you is this. Yesterday did you
8 testify they were not sent?

9 A. I can look at the lab sheet and I can tell you
10 if they were sent or not. I'm pretty
11 sure they were sent to the lab. Yes,
12 they were sent to BCI.

13 Q. If you testified yesterday that they were not
14 sent to BCI, that was a mistake?

15 A. If I testified to that, it was a mistake, but
16 they were definitely sent to BCI.

17 Q. They were not tested?

18 A. No.

19 Q. When were they sent?

20 A. December 24th.

21 Q. Three days after you got them or about?

22 A. Yes.

1 Q. In the three days that those shoes were in the
2 possession of the Howland Police
3 Department, before they were sent to BCI,
4 what did you do with those shoes?

5 A. Sat in the sealed bag. We didn't do anything
6 to them.

7 Q. Did you examine them for blood?

8 A. No, I did not.

9 Q. Did you ever look at the bottom of those shoes
10 to see if there was as red substance on
11 the bottom of those shoes?

12 A. Between December 21st and the 24th?

13 Q. Ever?

14 A. Yes.

15 Q. When?

16 A. After they came back from the lab, we took a
17 closer look at the shoes.

18 Q. You took a closer look at the shoes after they
19 came back from the lab?

20 A. Yes.

21 Q. When you sent those shoes to the lab, did you
22 request that the lab do blood testing on

6040

1 them?

2 A. Yes.

3 Q. Did you tell them not to do that testing?

4 A. No.

5 Q. Besides taking a closer look at the shoes and
6 seeing red stuff on the bottom, what did
7 you do, if anything?

8 A. I looked at the tread and compared it with the
9 photographs that we had.

10 Q. Let me see if I got this right. You looked at
11 this tread, right?

12 A. Yes.

13 Q. And then you looked at these photographs?

14 A. Yes.

15 Q. Which ones?

16 A. These are enlargements.

17 Q. Do you have the enlargements to look at?

18 A. No.

19 Q. Okay.

20 A. There are more photographs.

21 Q. Pick out the best one right here.

22 A. You have only given me three and two of them

6041

1 are distance shots and there's better
2 shots of this.

3 MR. INGRAM: I respectfully request
4 a recess. I want the best pictures you have of
5 this impression.

6 A. Certainly.

7 MR. INGRAM: I'm sorry. I have no
8 choice.

9 THE COURT: Approach the bench
10 please.

11 (SIDE BAR DISCUSSION, OFF THE RECORD AND
12 OUT OF HEARING)

13 MR. INGRAM: Can I see those photos?
14 Let's just finish.

15 THE COURT: Mr. Ingram?

16 MR. INGRAM: I wish to try to
17 finish.

18 THE COURT: Fine.

19 Q. You made your comparison with the shoes and
20 photographs similar to in quality to
21 State's Exhibit 8?

22 A. Yes.

1 MR. INGRAM: I request to publish
2 State's Exhibit 8 to the Jury.

3 THE COURT: Any objection?

4 MR. BECKER: I have no objection.

5 Q. From a photograph although smaller in size,
6 but similar in quality to State's Exhibit
7 8, you compared the dots and swirls on
8 the bottom of those tennis shoes to that
9 photograph?

10 A. Yes.

11 Q. And you are as certain of the rest of your
12 testimony as you are of the results of
13 that comparison?

14 A. You are asking me --

15 Q. Are you as certain of your --

16 A. I'm certain. You are asking me an opinion
17 oriented question.

18 MR. INGRAM: No further questions.

19 REDIRECT EXAMINATION BY MR. BECKER:

20 Q. Is that photograph the one that you used to
21 make your comparison?

22 A. This exact one, no.

6043

1 Q. Can you tell this Jury how cooperative this
2 Defendant was in terms of her
3 relationship with Nate Jackson?

4 A. She was not.

5 Q. How cooperative was this Defendant about
6 telling you about this murder plan that
7 she wrote 280 some letters between
8 October and December with Nate Jackson?

9 A. She was not.

10 Q. How cooperative was this Defendant in telling
11 you that she accepted 19 collect phone
12 calls from prison from Nate Jackson?

13 A. She was not.

14 Q. What did this Defendant tell you about the
15 murder plan to kill Robert Fingerhut?

16 MR. INGRAM: Objection.

17 THE COURT: What is your objection?

18 MR. INGRAM: He's assuming that, it
19 assumes facts that he can't assume.

20 MR. BECKER: I'll withdraw the
21 question.

22 THE COURT: The objection is

1 sustained as to the form of the question.

2 Q. What did this Defendant tell you about writing
3 letters and discussing the murder of
4 Robert Fingerhut?

5 A. Said it was just prison talk and she was
6 telling Nate Jackson what he wanted to
7 hear.

8 Q. What did this Defendant tell you on December
9 12, 2001 either at the house or at the
10 Howland Police Department, about taking
11 Nate Jackson to a hotel in Boardman,
12 Ohio?

13 A. Nothing. She never told me that.

14 Q. What did this Defendant tell you about the
15 nine telephone calls she had between 9:45
16 p.m. and 11:45 p.m. that she had with
17 Nate Jackson?

18 MR. INGRAM: Objection. He's
19 assuming that those calls are received.

20 THE COURT: It shows phone calls are
21 made. It doesn't show who made them. Sustained.

22 Q. I'll rephrase the question. What did she tell

6045

1 you about the nine telephone calls she
2 received from her cell phone that she
3 received from 9:45 to 11:45 p.m. on
4 December 11, 2001?

5 MR. INGRAM: Objection.

6 THE COURT: What is your objection?

7 MR. INGRAM: Same objection. She
8 received. All you know is that --

9 THE COURT: Is there testimony that
10 she actually received the phone calls?

11 MR. BECKER: I'll rephrase the
12 question again.

13 THE COURT: Sustained.

14 Q. What did she tell you about the nine phone
15 calls that were received in her red
16 Chrysler 300-M, the phone call that --
17 the telephone that was in that car, which
18 by the way she said she was driving
19 around -- what did she tell you about
20 those nine phone calls?

21 MR. INGRAM: Go ahead.

22 A. Told me she received one phone call from Nate

1 Jackson.

2 Q. And when did she tell you she received that
3 phone call?

4 A. About quarter to ten.

5 Q. P.M.?

6 A. Yes, Sir.

7 Q. What did she tell you on December 12th, about
8 her written letters and her plan to wake
9 up on Christmas morning by Nate Jackson?

10 A. Nothing.

11 Q. What did she tell you about her letters and
12 her plan in the letters to marry Nate
13 Jackson?

14 A. Nothing.

15 Q. What did she tell you about her plans to get
16 Nate Jackson a red Cadillac Deville with
17 personal license plates?

18 A. Nothing.

19 Q. Now, on December 12, 2001, when you were in
20 that house, and Mr. Ingram showed you a
21 photograph with some handcuffs, what did
22 you know at that time about any

1 discussion, any letters between Miss
2 Roberts and the Defendant, Nate Jackson
3 or Mr. Nate Jackson about the use of
4 handcuffs?

5 A. Didn't know anything about the handcuffs.

6 Q. So what did you know about the evidentiary
7 value on December 12, 2001 of any
8 handcuffs involved in this case?

9 A. Didn't know that.

10 Q. What was the importance of marijuana to this
11 murder?

12 A. Nothing.

13 Q. You testified that she was cooperative -- or
14 tell this Jury how cooperative she was to
15 prove to you that she didn't shoot a
16 weapon?

17 A. She held her hands out and I took some
18 swabbings from her hands.

19 Q. And how cooperative was she to give you the
20 shirt off her back that night?

21 A. She did when I asked her if she would
22 cooperate.

1 Q. What did she tell you on December 12th about
2 any person she may have had knowledge of
3 wanting to kill her husband?

4 A. She gave me the names, the name of one person.
5 She didn't say he wanted to kill him,
6 this Bobby fellow, and some crazy people
7 that would come into the bus terminal,
8 but no names of anybody.

9 Q. What about Nate Jackson?

10 A. She didn't tell me about Nate Jackson.

11 Q. When she was there making those phone calls on
12 December 16th, to Nate Jackson, you gave
13 a list of questions to her, correct?

14 A. Yes.

15 Q. Please tell this Jury how she was going to ask
16 these questions? How long prior to that
17 had you discussed asking these questions?

18 A. We discussed those questions. They were
19 formulated with Attorney Chuparkoff and
20 Donna Roberts at the Howland police
21 station and discussed it was important
22 that she ask all of the questions.

1 Q. Well, go ahead.

2 A. We had gone over them and discussed the
3 importance of discussing these questions
4 with Nate Jackson to see if he would talk
5 about the injury to his finger and how he
6 received the injury to his finger and
7 where he was at. Prior to even going to
8 the house on the 15th and then went over
9 them again in the house on the 16th.

10 Q. Now, were they just given to her in writing
11 the moment she tried to make that phone
12 call?

13 A. No. We talked about them before we even wrote
14 them down. We discussed what the
15 questions were going to be and then we
16 wrote them down for her. Her Attorney
17 looked at them and talked to her about
18 them and went over them, talked to her
19 about the question. "How did Nate
20 Jackson injure his finger? Is he getting
21 treatment for the finger?" Just general
22 questions to open a discussion up and how

1 important it was.

2 Q. And when she was making the phone calls with
3 these questions in front of her, what
4 efforts did she do to even look at the
5 questions?

6 A. She did not.

7 Q. Who did she tell you she had dinner with on
8 the night of December 11, 2001?

9 A. She had dinner by herself at the Red Lobster.

10 Q. And who did she tell you she had taken to
11 Youngstown, Ohio on December 12th -- or
12 I'm sorry, on December 12, 2001, who did
13 she tell you she had taken to Youngstown,
14 Ohio on December 11th?

15 A. She didn't say she had taken anyone to
16 Youngstown.

17 MR. BECKER: I have nothing further.

18 RECROSS EXAMINATION BY MR. INGRAM:

19 Q. When you call 911, that usually means the
20 police are coming to your house, right?

21 A. Yes.

22 Q. And on December 12th, Donna did tell you she

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1 had dinner at the Red Lobster, right?

2 A. Yes.

3 Q. She didn't say Cafe Capri, she didn't say the
4 Saratoga, she didn't say Bob Evans -- Red
5 Lobster?

6 A. Yes.

7 Q. And on December 12th, she told you that Nate
8 Jackson called her from prison?

9 A. Yes.

10 Q. And on December 12th, she told you that she
11 had one phone call from Nate Jackson at
12 9:45?

13 A. Yes.

14 Q. And the rest of those phone calls, you don't
15 know if the phone is busy, if there's no
16 answer or if there's voice mail, do you?

17 A. No.

18 MR. INGRAM: No further questions.

19 THE COURT: Any other questions?

20 MR. BECKER: No, Sir.

21 THE COURT: Chief Monroe, you may
22 step down.

1 (SIDE BAR DISCUSSION, OFF THE RECORD AND
2 OUT OF HEARING)

3 THE COURT: Ladies and gentlemen,
4 that will conclude the testimony for today. I'm
5 going to ask you to come back tomorrow at 1:00. We
6 have an entire morning of things that we need to do
7 on this case on the record, outside the presence of
8 the Jury. We'll go from 1:00 until 4:30 tomorrow.
9 Monday, we're off. So what we don't conclude
10 tomorrow, we'll come back and attempt to do so on
11 Tuesday or Wednesday, however long it takes.


12 I would again remind you folks that you
13 are not to read anything in the newspaper, watch
14 anything on T.V., not to have any discussion with
15 any other person about the facts or about this
16 case, and I trust you all have a nice evening.
17 We'll see you back here tomorrow at 1:00.

18 (Court in Recess at 4:20 p.m.)
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REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.



MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio

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IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
TRIAL COURT CASE NO. 01-CR-793
SUPREME COURT OF OHIO CASE NO. 03-1441

STATE OF OHIO)
) VOLUME XXVIII
 Plaintiff)
)
-vs-)
)
DONNA M. ROBERTS)
)
 Defendant)

BE IT REMEMBERED, that on Friday, May 23,
2003, Tuesday, May 27, 2003, Wednesday, May 28, 2003,
Tuesday, June 3, 2003, Wednesday, June 4, 2003, and
Friday, June 20, 2003, these proceedings came on to
be heard before one of the Judges of this Court,
John M. Stuard, in Courtroom No. 2, on High Street,
Warren, Ohio, before the case heretofore filed herein.

Mary Ann Mills, RPR
Official Court Reporter
Trumbull County, Ohio

A P P E A R A N C E S

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I N D E X

VOLUME XXVIII:

(Friday, May 23, 2003, Tuesday, May 27, 2003
Wednesday, May 28, 2003, Tuesday, June 2,
2003, Wednesday, June 4, 2003 & Friday,
June 20, 2003)

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Closing Argument by Mr. Bailey (May 27, 2003)	6117
Closing Argument Waived by Mr. Ingram (May 27, 2003)	6146
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Verdict (May 28, 2003)	6210
In-Chamber Hearing with Dr. Eberle (June 3, 2003)	6220
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Mitigation Hearing - (June 4, 2003)

Opening Statement Waived by Mr. Ingram	6252
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Sentencing Hearing (June 20, 2003)	6336

1

2 Friday, May 23, 2003; In Open Court at 2:00 p.m.:

3 (Jury is not present.)

4

THE COURT: The Prosecution and the
5 Defense have taken most of the morning reviewing
6 the evidence to find which items they agreed should
7 be submitted, and I assume they have probably found
8 some they disagree on. Is that correct?

9

MR. BECKER: I think the only ones
10 that there's going to be any argument over are
11 dealing with the letters.

12

MR. INGRAM: No argument.

13

MR. BECKER: I don't know if it
14 would be better if I run through the numbers and
15 what they are. For the record, I'll do that.

16

THE COURT: Let me ask you this up
17 front. Are there items that there's a disagreement
18 on that have been proffered that should not be
19 submitted to the Jury?

20

(Off the record)

21

THE COURT: Review each of the
22 proffered Exhibits and then if there's any that are

1 objected to or any comment, please make it at that
2 time.

3 MR. BAILEY: With the photos, I
4 think we're going to agree, but the Court is going
5 to have to make the finding on the photographs that
6 the photographs are relevant and of probative value
7 in assisting the trier of fact to determine the
8 issues, and/or are illustrative of testimony and
9 other evidence and that the danger of material
10 prejudice to the Defendant is outweighed by their
11 probative value and they are not repetitive or
12 cumulative in number. Is that right?

13 MR. BECKER: Let me get started
14 here, because this may take a little bit of time.
15 The State at this time is going to move for
16 admission of State's Exhibit No. 1, which is the
17 911 telephone call. It is the tape of the 911
18 call.

19 MR. INGRAM: No objection.

20 MR. BECKER: State's Exhibit No. 1-A
21 is the CAD sheet from the 911 call that has the
22 times and locations.

1 MR. JUHASZ: We don't object.

2 THE COURT: For the record, if
3 there's no objection made, when a number is
4 mentioned, I'll assume by the Court that there's no
5 objection and that will be admitted.

6 MR. BECKER: Thank you. State's
7 Exhibit 2 is the video tape of the Fonderlac crime
8 scene.

9 MR. JUHASZ: No objection.

10 MR. BECKER: Now we have got some
11 photographs, that these will be objected to. I'm
12 sorry, No. 3 is the crime scene diagram.

13 MR. JUHASZ: No objection.

14 MR. BECKER: State's Exhibit 4,
15 these next Exhibits until number 60 are 8-1/2 by 11
16 photographs. State's Exhibit 4?

17 MR. INGRAM: No objection.

18 MR. BECKER: State's Exhibit 5.

19 MR. INGRAM: No objection.

20 MR. BECKER: No. 6.

21 MR. INGRAM: No objection.

22 MR. BECKER: No. 7.

1 MR. INGRAM: No objection.

2 MR. BECKER: No. 8.

3 MR. INGRAM: No objection.

4 MR. BECKER: No. 9.

5 MR. INGRAM: No objection.

6 MR. BECKER: No. 10.

7 MR. INGRAM: No objection.

8 MR. BECKER: No. 11.

9 MR. INGRAM: No objection.

10 MR. BECKER: No. 12.

11 MR. INGRAM: No objection.

12 MR. BECKER: No. 13.

13 MR. INGRAM: No objection. Actually
14 we have no objection through number 20.

15 MR. BECKER: 14, 15, 16, 17, 18, 19
16 including 20.

17 MR. JUHASZ: Including 20.

18 MR. BECKER: There's no objection to
19 those. 21, is there an objection to?

20 MR. INGRAM: Yes.

21 THE COURT: Set that aside for now.

22 MR. BECKER: 21, 24, 25, 26, 27, 28,

1 31, those are basically the autopsy photographs.

2 Do you want to do the objections now?

3 MR. JUHASZ: Your Honor, so the
4 record is clear, State's Exhibit 21 is a photograph
5 of the decedent Mr. Fingerhut on the coroner's
6 morgue table. I think what I'll do with the
7 Court's permission, is identify what they all are,
8 because the objection is basically the same with
9 all of them. State's Exhibit 24 is a photograph of
10 Mr. Fingerhut on the coroner's table showing the
11 chest torso area between basically the neck and the
12 waist line. It shows the, what I think
13 Dr. Germaniuk identified as the exit wound in the
14 right shoulder area. State's Exhibit 25 is a
15 photograph of Mr. Fingerhut on the table showing
16 the feet and chin area from the bottom of the feet
17 up to the knees. State's Exhibit 26 is Mr.
18 Fingerhut on the coroner's table. This is a view
19 of the back. The body is laying on what appears to
20 be the right side and it shows the back of the head
21 and the decedent's upper and middle back. State's
22 Exhibit 27 is a photograph of Mr. Fingerhut on the

1 coroner's table showing the bullet wound marked A
2 on the left side of the head with the hair shaved
3 away to show it very clearly. That is also true of
4 State's Exhibit 28 which is actually a closer shot
5 of 27. And State's Exhibit 31 is a photo of the
6 skull showing the head wound with at least to my
7 untrained eye, the scalp removed and showing the
8 fractures of the skull. Mr. Bailey has set forth
9 the case that sets forth the standard, the Morales
10 case and the question obviously is, is there
11 prejudice to the Defendant versus what do these
12 photographs prove. This case is, as I understand
13 it, from everything the State has said and
14 everything the State has proved, is a case where
15 this Defendant is charged with complicity to
16 aggravated murder. There's certainly been ample
17 testimony that the decedent died from a gunshot
18 wound from Dr. Germaniuk. These photographs, we
19 believe, there's nothing about the way Mr.
20 Fingerhut died save and except that it was from
21 gunshot wounds, that is probative to the State's
22 case versus the obvious prejudice. The reason for

1 the decision in Morales in the first place which is
2 that photographs like these tend to get people of
3 ordinary sensibilities quite worked up. Therefore,
4 we feel that the prejudice does outweigh the
5 probative value in this case. If this was a case
6 where Mr. Jackson was on trial, claiming seelf
7 defense, something about the angle and the nature
8 of the injuries were pertinent, it might be a
9 different situation here. Simply the fact that
10 he's dead is sufficient. The question in this case
11 is, as we have been telling jurors all through Voir
12 Dire, did Donna Roberts help him. And so that's
13 the basis for the objection.

14 THE COURT: What is the State's
15 response? You didn't address Exhibits 4 and 5.

16 MR. BECKER: There's no objection to
17 those.

18 MR. JUHASZ: There's no objection to
19 those.

20 MR. BAILEY: May it please the
21 Court, counsel for the Defense, these photographs
22 depict the victim's body and it indicates the

1 coroner's examination and the wounds on the victim.
2 It illustrates the testimony of the State's
3 witnesses concerning the murder, the cause of
4 death, the Defendant's liability therefor. It also
5 indicates basically because the Defendant is
6 charged with complicity in this killing, and in
7 conjunction with the other evidence in this case
8 with the phone calls that were taped, with the
9 letters that were sent between the Defendant and
10 the co-defendant, these photographs of the victim's
11 injuries are probative, with regard to showing her
12 intent and her deliberation in the instant case.

13 Further, even if somewhat gruesome, the
14 photographs were properly authenticated. They are
15 relevant, and of probative value in assisting the
16 Jury in determining the issues in this case and
17 they are illustrative of the testimony and the
18 other evidence in this case. And we submit to the
19 Court that the danger of material prejudice to the
20 Defendant is outweighed by the probative value and
21 there's certainly not repetitive or cumulative in
22 number which was a concern of the Supreme Court and

1 in the Morales case which was State vs. Morales, 32_
2 Ohio State_3rd, 252, a 1987 case, where the Supreme
3 Court indicated they were concerned about the
4 overwhelming number of photographs that were being
5 admitted in capital cases. This case, because
6 there's the heightened test where the probative
7 value of the photographs is not substantially
8 outweighed by their prejudicial effect, if any, we
9 certainly would meet that Supreme Court test in
10 this particular case, and none of these photographs
11 should be excluded.

12 THE COURT: In regard to Exhibit No.
13 21, that is a picture of the neck and face of the
14 deceased. The question of -- it doesn't show any
15 wound. It shows what might appear to be some blood
16 on the left side of the deceased, but that doesn't
17 show much of anything. The question of identity is
18 not in contention here. So that will be withdrawn
19 from the Jury.

20 MR. BECKER: Just very briefly, I
21 would tell the Court, if you recall -- that is
22 fine. Never mind.

1 THE COURT: Number 21 is not
2 admitted as part of the evidence. Number 24 shows
3 what appears to be a bullet entrance wound on the
4 right upper chest. Number 25 shows merely a
5 picture of the lower leg and feet. Number 26
6 merely shows the back view with a lot of blood in
7 the hair. Number 27 and 28 show the same thing
8 from a different angle of the entrance wound of the
9 projectile into the head. The Court is going to
10 allow that at the State's election, either 27 or
11 28. The others will not become part of the
12 evidence, but will become part of the record. The
13 bullet wound on the chest, I remember that the
14 testimony was the death was caused, the immediate
15 death by the bullet wound to the head. It is true
16 that the Doctor testified to that, but I think that
17 this is part of the State's right to have one
18 photograph showing that. The Exhibit 31, I think,
19 would be inflammatory. It doesn't add anything to
20 the picture portrayed in 27 or 28, other than it is
21 more gruesome. So number 31 will not be admitted,
22 either.

1 MR. BECKER: I have a question. I
2 wanted to make sure I understand. You are saying
3 that 24, 25, 26, are out?

4 THE COURT: 21, 24, 25, 26 and 31
5 are not admitted. Either 27 or 28 is out at your
6 election.

7 MR. BECKER: The State is going to
8 elect that State's Exhibit 27 remain in evidence.
9 Well, at our election the Court gave us, we'll
10 withdraw 28. I'll take State's Exhibits 21, 24,
11 26, 31 and 28. I'm going to put them in the box
12 back here that we have the Exhibits that are out.
13 These three boxes will remain. I'll put these
14 photographs back in the box. We're withdrawing
15 pursuant to the Court's order, we're withdrawing
16 number 28. You want it to remain part of the
17 record?

18 THE COURT: I think it is more
19 proper that everything remains part of the record
20 that has been proffered. You have the right to
21 withdraw it if you wish.

22 MR. BECKER: Nos. 24, 25, 26, 28, 31

1 and 21 were all offered, but denied by the Court
2 admission. I'm going to leave those with the Court
3 Reporter here.

4 THE COURT: 27 will become part of
5 the submission to the Jury.

6 MR. BECKER: That leaves us with
7 State's Exhibit 33 which is the bullet that was
8 recovered.

9 MR. JUHASZ: No objection.

10 MR. BECKER: State's Exhibit 37 is a
11 close up of the entry wound in the chest. State's
12 Exhibit 38 is another view of the chest. State's
13 Exhibit 39 is an entry wound in the back. It is a
14 further distance than State's Exhibit 37. State's
15 Exhibit 40 is a picture of the graze wound on the
16 back. State's Exhibit 43 is a picture of the
17 webbing of the left hand. State's Exhibit 44 is a
18 different angle of the webbing of the left hand.

19 MR. JUHASZ: In light of Mr. Becker
20 has already identified what these photographs are
21 for the record, so I won't go through that again.
22 In light of what the Court has already held, I

1 would think that all of these photographs would be
2 excluded, because they don't show the wound that
3 caused the death. The rest of them have been
4 described by Dr. Germaniuk. I don't think there's
5 any reason to put them in front of the Jury. Again
6 incorporated by reference everything I said before
7 about this being a complicity case.

8 MR. BECKER: I would argue that
9 either 43 or 44 is obviously a defensive wound into
10 the webbing of his left hand.

11 THE COURT: There was testimony in
12 the other trial to get opinion evidence given by
13 the good Doctor that where he surmised that the
14 hand was probably put up when the weapon was fired.
15 I don't recall any of that testimony in this trial.

16 MR. INGRAM: It was not elicited.

17 MR. BECKER: It was not elicited in
18 this trial.

19 THE COURT: Again, I don't see the
20 relevancy. There was testimony that he was shot
21 three times, but that doesn't add anything to the
22 fact that the bullet wound in the head was what the

1 Doctor testified was the murder blow. These other
2 pictures, I think with good foundation on the
3 Defendant's part makes it arguable, but they don't
4 add anything, but they may tend to inflame the
5 Jury.

6 MR. BAILEY: The State's position is
7 that this particular photograph indicates that
8 something went wrong with the plan that was set out
9 in the letters and the phone calls. The plan was
10 to basically kidnap the victim and have the killing
11 happen outside of the house, and obviously
12 something went wrong and the Jury can draw a
13 logical inference from all of the facts, that there
14 was some type of a scuffle or resistance by the
15 victim and that is why there are these numerous
16 injuries to the victim and it is important. It
17 goes to what happened, and as to what went wrong
18 with the plan. It shows the Defendant's intent to
19 cause the death and certainly the co-defendant's
20 actions at the scene and the victim's actions. It
21 illustrates that point for the Jury.

22 THE COURT: How does the Defense

1 contend or rebut that contention?

2 MR. JUHASZ: I haven't heard
3 anything in any of the State's evidence that --
4 actually goes to anything Mr. Bailey said. Whether
5 that plan went wrong or not, this trial is about
6 whether or not she assisted Mr. Jackson. Whether
7 the plan was to kill him there or whether the plan
8 was to kidnap him away and the plan went wrong,
9 that doesn't have to do with the central question
10 this Jury has to decide.

11 THE COURT: That was not part of the
12 evidence in this case that I recall. I'm going to
13 stand with my prior ruling that this is irrelevant.
14 As I see it, the question that the State has to
15 convince the Jury of is that there was a plan, that
16 it was executed resulting in the death. That is
17 done by the testimony, if the Jury accepts it. And
18 that photograph is in line with that testimony
19 given by the Doctor. These other photographs don't
20 add anything to that, other than to accentuate the
21 manner in which it was done. There's nothing in
22 this trial that got into the manner in which it was

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1 done or that it wasn't according to the plan. It
2 is just that the plan to murder, there was a murder
3 and the death. So I think these would not be
4 proper to go to the Jury. That is 37, 38, 39, 40,
5 43, 44 on the Defendant's objection will not be
6 part of the evidence that the Jury sees, but will
7 become part of the permanent record.

8 MR. BECKER: Number 47, 48, show the
9 Cincinnati Reds baseball jacket which confirms the
10 fact that he was the individual who left the
11 Greyhound bus station.

12 MR. JUHASZ: No objection.

13 MR. BECKER: Number 49 is the
14 Cincinnati Reds baseball shirt with the blood on
15 it, which was testified to by some of the witnesses
16 that he was wearing that day.

17 MR. JUHASZ: No objection.

18 MR. BECKER: 51, 52, 53, 54, 55, 56
19 are all photos of the shirts he was wearing, the
20 red and black shirts, which was testified to by the
21 officers at the scene. Dr. Germaniuk as he
22 undressed him that one of the --

1 MR. JUHASZ: No objection.

2 MR. BECKER: Finally, that leaves us
3 with 57, 58, 59 and 60. Those photographs are
4 close ups of the face of Mr. Fingerhut. They show
5 an abrasion, actually two abrasions above the right
6 eyebrow in number 57. Number 58 shows an abrasion
7 on the bridge of the nose. It's a close-up
8 photograph. Number 59 shows an abrasion on the
9 right hand, the back of the right hand, and 60
10 shows the complete face with abrasions above the
11 right eyebrow and the bridge of the nose. And I
12 think there was ample testimony by Dr. Germaniuk
13 that they were non-lethal wounds. And again it is
14 the State's contention that the plan was for him to
15 be removed. And quite honestly, the letters which
16 we have not gotten to yet, clearly depict a plan
17 that there was a plan to move him at gun point in
18 handcuffs. It is going to be our argument to the
19 Jury that the reason the letters were found in the
20 house, because the plan was not to kill him in the
21 house. In fact there's conversation on the last
22 tape of December 8th by Mr. Jackson with this

1 Defendant that it was not to be done in the house.
2 They discussed that on December 8th. The State's
3 contention is that the plan went awry when Mr.
4 Fingerhut would not comply with their wishes to
5 leave the house or Mr. Nate Jackson's request to
6 leave the house at gun point. He fought for his
7 life and that led not only to his death, but to
8 these injuries.

9 MR. JUHASZ: Argument is basically
10 the same as before. I appreciate Mr. Becker's
11 point and what the argument that the State is going
12 to make to the Jury. Again, whether the plan went
13 wrong or didn't go wrong, the question in this case
14 is whether Donna Roberts helped Mr. Jackson. Those
15 photographs, even to those of us who are, I suppose
16 over the years desensitized since they are not head
17 shots with somebody's brains hanging out, but they
18 are still photographs that are likely to shock the
19 average jurors who are not accustomed to seeing
20 some of the things we unfortunately see in this
21 business. Because of that fact and the fact that
22 they don't prove the issue in this case, we object.

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1 MR. BECKER: If I may interject,
2 part of the defense in this case has been that Miss
3 Roberts was cooperative and certainly she knew
4 nothing was going on, because these letters were
5 found in her house and in her vehicle. The State's
6 contention is that the reason those were found
7 there is because the plan went awry, the plan that
8 is discussed over and over in the letters. The
9 plan that is discussed over and over in the phone
10 calls, and the fact that it went awry was for one
11 reason or one reason only because Mr. Fingerhut
12 would not comply with the wishes to leave the
13 house. He was shot, beat, and eventually killed in
14 the house when he refused to leave the house. And
15 I think those photographs clearly depict injuries
16 to his face, that would be recent abrasions that
17 were testified to, and I think they are very
18 important to overcome this defense of how
19 cooperative she was and how willing she was to
20 assist the Howland police in this investigation.
21 And to be quite frank, we have the highest burden
22 of proof under the law, and I respectfully request

1 that those photographs are really not gruesome at
2 all and I don't think they fall under the standard
3 of the gruesome photographs, because they don't
4 depict any open bullet wounds. They don't depict
5 any body parts. They are injuries that probably
6 would be no worse than if someone took a line drive
7 in the nose.

8 THE COURT: Again, I hate to keep
9 referring back to the Jackson case, but part of
10 that was on the reasoning put forth by the State at
11 the time of the introduction of these particular
12 photos, was that there's a possibility that some
13 sort of a self defense argument is going to be
14 raised by Jackson that he had no plan on shooting
15 him, and that they got into a fight and that is
16 what killed him. It didn't turn out that way and
17 that is part of the argument and what was accepted
18 by the Court. In this case, I think it is proper
19 argument to the Jury. You have the testimony of
20 the doctor that there were ancillary -- whatever
21 the proper word is, other injuries. I think for
22 that purpose, I would allow State's Exhibit 57 in

1 which clearly shows other marks. The others show
2 marks that add nothing to the fact. This is in
3 conjunction with the doctor's testimony and I think
4 that is relevant to it. 58, 59, and 60 will not be
5 admitted. 57 will be. 57 will be admitted.

6 MR. BECKER: There are a series of
7 photographs, a number of photographs now that I'll
8 go through. I don't believe any of them are from
9 the autopsy at this time. One is the shirt again.
10 It is 61.

11 MR. JUHASZ: No objection.

12 MR. BECKER: 62 is the shirt, it is
13 the black shirt. 63 I am assuming there's going to
14 be an objection on. It is a picture of Mr.
15 Fingerhut on the gurney with the chest wound to the
16 upper right. I'm going to assume that the Court is
17 going to exclude it.

18 THE COURT: I am always willing to
19 listen to argument, but I think that is pretty
20 consistent with what I said, with the facts that
21 have to be proven by the State. Anything that goes
22 beyond that, you run the risk of this case coming

1 back.

2 MR. BECKER: I'm going to then put
3 State's Exhibit 63 with the pile that are to remain
4 part of the record with the Court Reporter. Number
5 64 and 65 are photographs of the bullet removed
6 from Mr. Fingerhut's brain.

7 MR. JUHASZ: No objection to 64 and
8 65.

9 MR. BECKER: 66 is his clothing that
10 was removed from him at the morgue showing nothing
11 more than the clothing.

12 MR. JUHASZ: No objection.

13 MR. BECKER: 67 is the photograph of
14 the X-ray, with the actual bullet in the brain.
15 That is 67.

16 MR. JUHASZ: No objection.

17 MR. BECKER: 68 is another
18 photograph of the jacket. It is the back of the
19 jacket showing the hole in it.

20 MR. JUHASZ: No objection.

21 MR. BECKER: 69 is a photograph
22 taken in the day of 254 Fonderlac, the apron of the

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1 driveway going out to the road and showing tire
2 marks as if traffic had traveled in the grass.

3 MR. JUHASZ: No objection.

4 MR. BECKER: State's Exhibits 227,
5 228, 229, 230, 231, 232, 233, 234 are all
6 photographs of Wirt Street in Youngstown.

7 MR. JUHASZ: No objection.

8 MR. BECKER: State's Exhibits 239,
9 241 and 245 are pictures of Mr. Nate Jackson's left
10 index finger.

11 MR. JUHASZ: No objection.

12 MR. BECKER: State's Exhibit 76 is a
13 photograph of the screen door from the man door. I
14 believe it was actually introduced by Defense
15 counsel.

16 MR. JUHASZ: No objection.

17 MR. BECKER: State's Exhibits 91,
18 92, 93 and 94 are photographs of the kitchen.

19 MR. INGRAM: They were used by the
20 Defense. We have no objection.

21 MR. BECKER: We have no objection to
22 them being admitted, either. State's Exhibit 99,

1 100, and 101 are photographs of Mr. Fingerhut at
2 the scene laying down, and specifically State's
3 Exhibit 100 shows the graze wound on his right
4 shoulder. It also shows the jewelry that was
5 around his neck.

6 MR. JUHASZ: We have no objection to
7 99, 100 and 101.

8 MR. BECKER: State's Exhibit 104 is
9 a photograph of the bedroom and the sports jersey
10 that was testified to by Santiago Mason.

11 MR. JUHASZ: No objection.

12 MR. BECKER: State's Exhibit 109 is
13 the bullet hole above the Cleveland Indians banner
14 in the basement steps or doorway.

15 MR. JUHASZ: No objection.

16 MR. BECKER: 110 is a photograph of
17 the deceased laying on the kitchen floor.

18 MR. JUHASZ: No objection.

19 MR. BECKER: State's Exhibit 124 is
20 the leather couch that Mr. Mason testified to.

21 MR. JUHASZ: No objection.

22 MR. BECKER: State's Exhibit 125 is

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1 a bullet hole with a ruler above the Cleveland
2 Indians banner that was testified to.

3 MR. JUHASZ: No objection.

4 MR. BECKER: 126 is the outside of
5 the house.

6 MR. JUHASZ: No objection.

7 MR. BECKER: Also showing the lower
8 left corner the tire tracks. State's Exhibit 132
9 is the deceased looking in from the garage.

10 MR. JUHASZ: No objection.

11 MR. BECKER: Number 138 is
12 Dr. Germaniuk holding the firearm open and
13 displaying that it was fully loaded, the one that
14 was recovered at the step in the garage.

15 MR. JUHASZ: No objection.

16 MR. BECKER: Number 139 shows the
17 gun in relation to Mr. Fingerhut.

18 MR. JUHASZ: No objection.

19 MR. BECKER: Number 141 is a distant
20 shot of where the Cleveland Indians banner was and
21 where the bullet was removed.

22 MR. JUHASZ: No objection.

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1 MR. BECKER: Number 196, 197, 198
2 and 199 are all photographs of the red Chrysler
3 300-M.

4 MR. JUHASZ: No objection.

5 MR. BECKER: State's Exhibits 157,
6 159, 160, 162, 164, 165, 166, 168, 169, 170, 171,
7 172, 174, 178, 181, 182, 184, and 191 are all
8 photos of the silver Chrysler, various inside
9 portions, the metal clip, the sun visor, the door
10 handle.

11 MR. JUHASZ: No objection to any of
12 those.

13 MR. BECKER: State's Exhibits 192,
14 193, 194, 195 are photographs of the Wagon Wheel
15 Hotel room.

16 MR. JUHASZ: No objection.

17 MR. BECKER: State's Exhibit 197 is
18 the items that were found in the dumpster at the
19 Days Inn.

20 MR. JUHASZ: No objection.

21 MR. BECKER: State's Exhibits 199,
22 200, 201, 203, 205, 206, 207, 208, 209, 210, 211,

1 212, 213, 214, 215, 216, 217, 218, 219, 220, 221,
2 222, 223, 224, 225 and 226 show just about
3 everything at the Days Inn.

4 MR. JUHASZ: No objection.

5 MR. BECKER: I think that takes care
6 of the majority of the photographs for this case.

7 MR. BAILEY: With those photographs,
8 how many do we have that were admitted over
9 objection so far of the victim? Do we have two or
10 three?

11 MR. BECKER: Three or four, I think.

12 MR. BAILEY: With those three or
13 four, I take it the Court is making that finding
14 that those particular photographs that were
15 admitted are relevant and of probative value in
16 assisting the trier of fact to determine the issues
17 and are illustrative of the testimony and other
18 evidence, and that the danger of material
19 prejudices to the Defendant is outweighed by their
20 probative value and they are certainly not
21 repetitive or cumulative in number.

22 THE COURT: You have such a nice way

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1 of putting things.

2 MR. INGRAM: He speaks very well for
3 you, doesn't he?

4 MR. BECKER: I want to put this on
5 the record, because it is very important. There's
6 one person in our office, who immensely appreciates
7 the work Mr. Bailey does and that is LuWayne Annos.
8 I have heard her say that many times. State's
9 Exhibits 257 and 259; one is the bullet removed
10 from the wall and one is the bullet removed from
11 the clothing. 259 is the clothing, 257 is the
12 wall.

13 MR. JUHASZ: No objection.

14 THE COURT: By the way, did anyone
15 hear if Connie was able to contact everybody?

16 MR. JUHASZ: She was.

17 MR. INGRAM: She caught 13 out of
18 the 15 and the other two did not show up that she
19 contacted.

20 MR. BECKER: 251 is the .38 caliber
21 recovered at the Fonderlac address.

22 MR. JUHASZ: No objection.

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1 MR. BECKER: 252 and 252-A. 252 are
2 the live rounds recovered from that weapon. 252-A
3 are the two cartridges used to test fire the .38
4 caliber.

5 MR. JUHASZ: No objection.

6 MR. BECKER: 254 is the eye glasses.

7 MR. JUHASZ: No objection.

8 MR. BECKER: 253 is the lens from
9 the eye glass recovered in the garage.

10 MR. JUHASZ: No objection.

11 MR. BECKER: 255 is a cotton swab of
12 the blood stain that was later identified by Brenda
13 Gerardi of Mr. Fingerhut's in the front wall. It
14 is State's Exhibit 255.

15 MR. JUHASZ: No objection.

16 MR. BECKER: Number 260, 261, 262,
17 263, 264, 264-A, those are -- 260 is the death
18 certificate. 261 is the coroner's verdict. 262 is
19 the 11 page autopsy report. 263 is the microscopic
20 examination. 264 and 264-A are the toxicology and
21 radiology imaging that Dr. Germaniuk testified to.

22 MR. JUHASZ: No objection.

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1 MR. BECKER: 265 is Mr. Fingerhut's
2 blood drawn from the hospital.

3 MR. JUHASZ: No objection.

4 MR. BECKER: 266 is the bullet
5 removed from his brain.

6 MR. JUHASZ: No objection.

7 MR. BECKER: 267 is the visor.

8 MR. JUHASZ: No objection.

9 MR. BECKER: 268 is a driver's side
10 clamp from the silver Chrysler.

11 MR. JUHASZ: No objection.

12 MR. BECKER: 269 is the car keys
13 recovered from the silver Chrysler.

14 MR. JUHASZ: No objection.

15 MR. BECKER: 270 is the bag, the
16 shopping bag marked Nate Jackson.

17 MR. JUHASZ: No objection.

18 MR. BECKER: 276-C is the records of
19 Mr. Nate Jackson from Lorain Correctional
20 Institution.

21 MR. JUHASZ: I think we'll object on
22 relevance grounds.

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1 MR. INGRAM: Actually they were
2 provided in the other trial to provide handwriting
3 samples.

4 MR. BECKER: This shows the fact
5 that he was in Belmont Institution, which is where
6 Mr. Mason said that he saw the photograph that he
7 was in and it confirmed that he was in Belmont
8 Correctional Institution.

9 THE COURT: It also confirms the
10 date that he got out.

11 MR. BECKER: It confirms his release
12 date of December 9th.

13 MR. JUHASZ: The objection is
14 withdrawn. We have no objection.

15 MR. BECKER: 279, I'm going to
16 withdraw that. It is a -- or 279, do you want to
17 withdraw the submission sheet or do you care? All
18 right, 279 is a submission sheet. We would ask for
19 admission of that.

20 MR. INGRAM: We object.

21 MR. BECKER: It is the submission
22 sheet from Ed Lulla from the Days Inn to BCI. He

1 testified to it.

2 THE COURT: You have his testimony
3 on that. Number 279 is not admitted as a piece of
4 evidence to the Jury.

5 MR. BECKER: 282-A is the March 22nd
6 report from Mike Roberts. 282-C is his
7 supplemental report that was dated 3-22-02.

8 THE COURT: That is on ballistics?

9 MR. BECKER: Right.

10 MR. JUHASZ: No objection.

11 MR. BECKER: 283 is the February
12 13th report of Cindy Mayle.

13 MR. JUHASZ: No objection.

14 MR. BECKER: 284 is the serology
15 report of Dale Laux dated February 15, 2002.

16 MR. JUHASZ: No objection.

17 MR. BECKER: 286-A is dated 3-5-02.
18 286-C is dated 3-28-02 and 286-D is dated 3-17-02.
19 Those are the three reports from Brenda Gerardi
20 regarding the DNA.

21 MR. JUHASZ: No objection.

22 (OFF THE RECORD)

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1 MR. BECKER: State's Exhibits 287-A,
2 B and C, and I do want to point out for the record
3 that one of these Exhibits, 276-B has been marked
4 in this case with a 01-CR-793 which is the case
5 number, because in Mr. Jackson's trial, they had
6 two 287-A's. We put our own sticker on there and
7 we put on there, 01-CR-793. Those are the swabs
8 that Mr. Lulla got from the wall, trash can and
9 bathroom floor at the Days Inn.

10 MR. JUHASZ: No objection.

11 MR. BECKER: 288 is the washcloth
12 found from Days Inn.

13 MR. JUHASZ: No objection.

14 MR. BECKER: 289 is the hand towel
15 found under the sink at the Days Inn.

16 MR. JUHASZ: No objection.

17 MR. BECKER: State's Exhibit 290 is
18 the hair lifts from the Days Inn.

19 MR. JUHASZ: No objection.

20 MR. BECKER: 291 is the elimination
21 prints for Jennifer Robinson.

22 MR. JUHASZ: No objection.

1 MR. BECKER: 294 is the piece of
2 stained dressing that was pulled from the dumpster
3 that I believe Miss Gerardi testified to.

4 MR. JUHASZ: No objection.

5 MR. BECKER: 309 is the empty Days
6 Inn room key. It is in that envelope.

7 MR. JUHASZ: No objection.

8 MR. BECKER: 309-A is part of that.
9 They are two pieces to that envelope.

10 MR. JUHASZ: No objection to either.

11 MR. BECKER: 311, there's actually
12 311-A, B, C, D and E are the documents from the
13 Days Inn in Boardman.

14 MR. JUHASZ: No objection.

15 MR. BECKER: 312 is the Wagon Wheel
16 receipt from Wagon Wheel.

17 MR. JUHASZ: No objection.

18 MR. BECKER: 313 is the photographic
19 line-up shown to Jose Flores of the Wagon Wheel.

20 MR. JUHASZ: No objection.

21 MR. BECKER: 314 and 314-A, B, C, D,
22 and E, are the receipts, and the Red Lobster

1 documents.

2 MR. JUHASZ: No objection.

3 MR. BECKER: 315 is the actual
4 receipt from Red Lobster.

5 MR. JUHASZ: No objection.

6 MR. BECKER: 316 is the photographic
7 line-up used by Jill Kenyon.

8 MR. JUHASZ: No objection.

9 MR. BECKER: 317 are the leather
10 gloves.

11 MR. JUHASZ: No objection.

12 MR. BECKER: 318 are the shoes.

13 MR. JUHASZ: No objection.

14 MR. BECKER: 319 is a copy of the
15 composite copy of the video tapes testified to by
16 Detective Dillon. I'm sorry, the WRTA composite
17 security tape.

18 MR. JUHASZ: No objection.

19 MR. BECKER: 320, I think it is
20 actually -- it is 320-D and 320-I are two
21 photographs from the video of the Greyhound bus
22 terminal.

1 MR. JUHASZ: No objection.

2 MR. BECKER: 321 are the certified
3 copies of the phone records.

4 MR. JUHASZ: No objection.

5 MR. BECKER: 322 and 323 are the
6 insurance policies.

7 MR. JUHASZ: No objection.

8 MR. BECKER: 327-A, 327-B and 327-C
9 are the -- A is the certification, and B and C are
10 the documents from the firearms trace on the two
11 firearms.

12 MR. JUHASZ: No objection.

13 MR. BECKER: 351 is the swabbing of
14 Nate Jackson for DNA.

15 MR. JUHASZ: No objection.

16 MR. BECKER: 360 is the log of the
17 calls from the Lorain Correctional center.

18 MR. JUHASZ: No objection.

19 MR. BECKER: 361 is the composite --
20 is the compact disk of 19 telephone calls from
21 October 5th to December 8, 2001 between Nate
22 Jackson and Donna Roberts.

1 MR. JUHASZ: I'm going to probably
2 object to this one. Chris is going to introduce
3 the tapes, the audio tapes. This is on CD format.
4 It is cumulatave and unless someone has a
5 computer, it is of no utility any way, so it is not
6 going to help the Jury.

7 MR. BECKER: The only reason I would
8 be concerned about keeping 361 in, the Jury can
9 request the median to play it on. We have a lap
10 top. The other items are on tape and I would hate
11 to have one of those tapes break and then them not
12 being able to hear any of the tapes, or if
13 something would happen to any of the tapes. The
14 CD is a more secure median for them to listen to
15 those. I do recognize that they are cumulative,
16 but I think in a case of that magnitude it might be
17 a good idea.

18 THE COURT: I doubt that the Jury
19 will listen to that. It is part of the evidence,
20 Mr. Juhasz, and over your objection, I'll permit
21 number 361 to be admitted.

22 MR. BECKER: They may very well

1 listen to the tapes. If something were to happen
2 to the tapes, which can happen, then we're stuck
3 with missing some tapes or the tapes are broken.
4 362 inclusive to 381 are the audio tapes. Those
5 are all of the tapes, the 19 tapes.

6 THE COURT: Any objection to the
7 tapes?

8 MR. JUHASZ: No objection.

9 MR. BECKER: I think there's going
10 to be an objection to 362-A through 381-A. Those
11 are the transcripts.

12 MR. JUHASZ: We do object to those.
13 Those are cumulative. The Jury has been given the
14 tapes and the CD's.

15 THE COURT: There's no disputing
16 that they are cumulative. The question is --

17 MR. BECKER: They would assist the
18 Jury if they need to find something on the tapes
19 that they -- it would certainly make their job
20 easier.

21 MR. INGRAM: May I say something? I
22 think that the rule of law is that the tapes and

1 not the transcripts are evidence. The transcripts
2 are given to the Jury during the evidence phase of
3 the proceeding as a guide, but they are only a
4 guide, and I believe it is improper for the
5 transcripts to go to the Jury room.

6 THE COURT: Well, we run into the
7 situation --

8 MR. BECKER: I don't have a problem
9 if the Court wants to instruct them that way and
10 because I think the actual rule of law is that the
11 tapes are the authentic evidence and not the
12 transcript.

13 THE COURT: If the tapes should
14 break, we could make a request.

15 MR. INGRAM: We'll withdraw the
16 objection. Mr. Becker has persuaded us.

17 MR. BECKER: There's no objection to
18 the transcripts then?

19 MR. JUHASZ: Correct.

20 MR. BECKER: State's Exhibit 385
21 through 390 inclusive are various blood stains.
22 385 is from the visor of the car. 386 is from the

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1 trunk release, 387 is the swab stain, 388 is from
2 the blood standard from Mr. Fingerhut. 389 is,
3 well I don't have what that is. They are all from
4 the silver car, except for the standard from him
5 and the jacket.

6 MR. JUHASZ: We do not object.

7 MR. BECKER: 391 is the fingerprint
8 cards for Mr. Nate Jackson.

9 MR. JUHASZ: No objection.

10 MR. BECKER: 395 is the latent lifts
11 from the Days Inn.

12 MR. JUHASZ: No objection.

13 MR. BECKER: 396 is the receipt from
14 Wal-Mart.

15 MR. JUHASZ: No objection.

16 MR. BECKER: 397 is the composite
17 and 397-A is the transcript. We're going to
18 withdraw those per previous discussions with
19 counsel.

20 MR. JUHASZ: If they are withdrawn,
21 they are not part of the record.

22 THE COURT: I don't totally

1 disagree, but here's the thing that always concerns
2 me about that. Assume upon appeal they say, "Well,
3 something happened during the trial, they don't
4 have anything to testify." I don't have no problem
5 if you want to withdraw it.

6 MR. BECKER: We'll withdraw and
7 leave it here, because it was admitted or denied or
8 something and part of Nate Jackson's trial. 398
9 and 399 are the service records, 398 is for the red
10 Chrysler. 399 is for the silver Chrysler.

11 MR. JUHASZ: No objection.

12 MR. BECKER: Number 403 is Jill
13 Kenyon's identification of this Defendant.

14 MR. JUHASZ: No objection.

15 MR. BECKER: 404 and 405 are Mr.
16 Fingerhut's wallets.

17 MR. JUHASZ: No objection.

18 MR. BECKER: 406 is the Greyhound,
19 is the entire Greyhound bus video. We'll withdraw
20 406. They are the two tapes from the Greyhound bus
21 video. There's already a composite. Number 407
22 and 408, 407 is the key found under the victim.

1 408 is the tag that was found under the victim.

2 MR. JUHASZ: No objection.

3 MR. BECKER: We have one Joint
4 Exhibit that we would like to admit. Joint Exhibit
5 1 that Mr. Ingram probably lost.

6 MR. JUHASZ: For the record, Joint
7 Exhibit 1 consists of two photographs, which I
8 think have previously been admitted into evidence.

9 MR. BECKER: The one on the bottom
10 was not.

11 THE COURT: There was a stipulation,
12 was there not on the one?

13 MR. BECKER: Joint Exhibit 1 is
14 mutually agreed to and I don't think we have any
15 objection to their Exhibits.

16 MR. JUHASZ: Defendant's 1 and
17 Defendant's 2 are photographs of the closed man
18 door at the Fonderlac residence as is Defendant's
19 Exhibit 3. Defendant's Exhibit 4 is a photograph
20 of a drawer in the Fonderlac residence.
21 Defendant's 5 is a consent to search dated
22 12-12-01. Defendant's 6 is a consent to search

1 dated 12-17-01.

2 MR. BECKER: No objection.

3 THE COURT: A little bit premature
4 on Defendant's Exhibits coming in. For the record,
5 there will be no objection when they properly move
6 to submit.

7 MR. BECKER: You're right.

8 THE COURT: Now, if I'm not
9 mistaken, some numbers that were not utilized in
10 the sequence from one to 408.

11 MR. JUHASZ: Correct.

12 THE COURT: Those were not
13 proffered, is that correct?

14 MR. BAILEY: That is correct,
15 because we use the same numbering system that they
16 had in State versus Nate Jackson and there was a
17 motion to extend the time to file the appeal in the
18 Nate Jackson case, so because of that, we have the
19 Exhibits here, because we needed the same Exhibits
20 in both trials, so all of the Exhibits that were
21 relevant in the Nate Jackson case are not relevant
22 in this case, so we didn't proffer all of the

1 numbers.

2 THE COURT: Just so we have all of
3 the sequence, so all of the numbers have been gone
4 over in this recent afternoon. What is the State's
5 wish at this point?

6 MR. BECKER: The State would now,
7 subject to the admission of the Exhibits we
8 discussed, and I don't think there's any objections
9 other than what we have discussed, we would like to
10 rest in front of the Jury on Tuesday morning.

11 Your Honor, I apologize, there are --
12 well, we're still waiting to see what Mr. Ingram
13 wants do with the letters. Those Exhibits are 276,
14 271. Wait a minute. 271-N-1 through and including
15 273-N-143 and 271-D-1 including, and through
16 271-D-139. Those are the letters that were
17 recovered in connection with this case and we would
18 move for the admission of all of those Exhibits.
19 We're also withdrawing for the record, we're going
20 to withdraw State's Exhibits 253 and 254. They
21 were photographs of the eye glasses that were found
22 in the garage. The glasses themselves are already

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1 admitted with the lens. Also, there's been a
2 stipulated entry on State's Exhibits 275-A and B,
3 those are two letters that were found outside the
4 area where the others were found. I know there's
5 going to be some objections. I don't know. We
6 want to move for the admission of those letters.

7 MR. JUHASZ: No objection.

8 MR. BECKER: With that --

9 THE COURT: All of those letters are
10 admitted then.

11 MR. BECKER: With that, we would
12 like to come back Tuesday and rest in the presence
13 of the Jury, and I believe you had the Jury
14 instructions.

15 MR. JUHASZ: I do.

16 (OFF THE RECORD)

17 (End of Hearing at 3:20 p.m.)

18

19

20

21 Tuesday, May 27, 2003; In Open Court at 10:20 a.m.:

22 (Jury is not present.)

1 THE COURT: I believe before we
2 proceed, you wish to have, the State is formally
3 resting. They will do so in front of the Jury.
4 You wish to take up your Rule 29 motion at this
5 point?

6 MR. JUHASZ: Yes, Sir. If it please
7 the Court. Judge, we filed a written motion this
8 morning for judgment of acquittal pursuant to Rule
9 29. I'm not going to regurgitate the entire
10 motion. I do want to point out, however, several
11 highlights that I think are material for the
12 Court's consideration in ruling on the Rule 29
13 motion.

14 As I set forth in our motion, last year
15 we filed a motion asking the Court to require the
16 Government to establish the existence of probable
17 cause if this was a capital case, before we engaged
18 in the process of death qualification, a lengthy
19 process that we did in fact engage in in this case.
20 And what we said in that motion essentially was you
21 shouldn't engage in death qualification, if this
22 truly is not a capital case, because of the

1 recognition of the fact, primarily that death
2 qualification results in Juries which are more
3 conviction prone.

4 The Court overruled that motion, and we
5 engaged in the process of death qualification and
6 now we have heard all of the evidence that the
7 Government intends to offer as to both the charges
8 and the specifications. I want to turn first to
9 the specifications under 2929.04(A)(7) as we have
10 discussed in going over the Jury instructions this
11 morning, off the record, that statutory
12 specification is constructed in the alternative.
13 The State has in their proposed instructions, taken
14 out the language to say that the Defendant is the
15 principal offender, appropriately so because all
16 along the State has said that she's not the trigger
17 person. She's a complicitor. I don't think that's
18 the end of the inquiry, however, because the second
19 portion of that specification says that if not the
20 principal offender, that the offender committed the
21 aggravated murder with prior calculation and
22 design.

1 I don't think it is accidental that the
2 General Assembly adopted that statutory language,
3 and the Taylor case, which we cited in our
4 Memorandum is a case that directly addresses that
5 issue. In that case, the Supreme Court made it
6 very clear that even though you are guilty, that
7 you can charge somebody with murder under either
8 the A or the B subsection of the aggravated murder
9 statute, and that if enough evidence is presented,
10 that certainly is enough for a guilty finding. But
11 there's a different inquiry, one commanded by the
12 Eighth Amendment as set forth in Zant vs. Stevens
13 that says that murderers, the class of murderers
14 has to be sufficiently narrowed, so that we're
15 choosing only the worst of the murderers for
16 consideration of capital punishment.

17 I also cited a dissent from Justice
18 Pfifer in the Simco case where I think he makes
19 that point very clear, and in essence what he's
20 saying, if you don't do that, you are not being
21 proportional in the way that you impose the death
22 penalty.

1 In this case, there's no evidence and
2 there's not really even an allegation by the
3 Government, their proposed Jury instructions in
4 fact say that they use the words complicity. I
5 don't think the statute allows for that. It is a
6 death penalty case and the statute has to be
7 strictly construed, and so while the State has in
8 essence taken out the principal offender part, I
9 think that at least as to the A-7 specification,
10 this is not as we have claimed all along, truly a
11 capital case.

12 I think it is error to instruct the Jury,
13 it is a clear violation of the statute to instruct
14 the Jury that if you find that Nate Jackson, while
15 doing all of this stuff, committed the homicide,
16 and it was done with prior calculation and design,
17 that that brings this Defendant as a complicitor
18 into the statute.

19 Now, there are several cases that we
20 discuss in the Memorandum, the Taylor case, which I
21 mentioned earlier from the Ohio Supreme Court. In
22 that case, Taylor was present with the other fellow

1 Turnage. And they, of course, charged him as a
2 complicitor. The evidence was pretty clear that
3 Turnage is the person who whacked the guy over the
4 head and caused his death. And so when the case
5 got to the Ohio Supreme Court, they said if you
6 want to charge Taylor as a complicitor, you
7 certainly can do that. But when it comes to
8 establishing that he's a principal offender, that's
9 a separate question. The other case that we cited
10 is the Mapes case, 1985, from the Ohio Supreme
11 Court, the Ballew case from the Ohio Supreme Court
12 from 1997, and also the Guyton case and Appellate
13 case before Issue One, a 1984 case. What all of
14 those cases have in common is one feature that this
15 case does not have, and that is that there's no
16 evidence or allegation that the Defendant was there
17 actually participating. If the Jury believes the
18 State's evidence about the tapes and the letters
19 and the plan and all of that, that is certainly
20 complicity to aggravated murder. That is a wholly
21 separate question, however, from whether the
22 specification should be submitted to the Jury.

1 We set forth what the test is for any
2 Rule 29 motion, and we submit that this
3 specification doesn't meet that test. The latest
4 of those cases incidentally was a 2002 case from
5 the Seventh District called State vs. Twyford where
6 they again go over the Penex and Taylor standard,
7 and they say that for (A)(7) the aggravated murder
8 has to be either committed while the Defendant was
9 committing one of the five listed felonies or the
10 aggravated murder has to be committed while the
11 Defendant was committing one of the offenses, and
12 the Defendant committed the aggravated murder with
13 prior calculation and design.

14 All of those cases have something in
15 common that we don't have here, which is an
16 allegation or evidence that the Defendant was
17 directly involved in causing Mr. Fingerhut's death.

18 As to the aggravated murder counts
19 themselves, we submit that a Rule 29 motion is
20 proper because as we have discussed in preparing
21 the Jury instructions, if you assist a principal
22 after the offense and what we used to call an

1 accessory after the fact, that is not sufficient
2 for complicity. We think that that is what the
3 evidence reasonably shows in this case, and
4 therefore, submission of the case on complicity to
5 aggravated murder is also inappropriate and
6 judgment of acquittal should be entered as to the
7 aggravated burglary. I point out in the Memorandum
8 that this is not the Jackson case. We don't have
9 the benefit of some of the evidence here. The
10 Court has to rule on this motion based upon what is
11 presented in this case. While there's
12 circumstantial evidence presented in this case
13 that Jackson was there, there's no circumstantial
14 evidence that he entered by force, stealth or
15 deception, that he committed a trespass, or that he
16 was there without privilege or authority. In fact,
17 if the State's argument is correct, that Donna
18 Roberts was involved, then I guess he did have
19 authority.

20 So, under those standards, we submit that
21 the submission of the aggravated burglary charge
22 would be inappropriate and finally as to the

1 aggravated robbery charge, we also think that a
2 Rule 29 motion should be granted, because part of
3 the -- part of the elements of the offense of
4 aggravated robbery are that there be a theft
5 offense and part of the elements of that T-R that
6 the person exerted control over property or
7 services with a purpose to deprive the owner of
8 those property or services. And if you look at
9 OJI, which the State so fondly clings to in its
10 Jury instruction. Deprive means to withhold the
11 property of another permanently or for a period
12 that appropriates a substantial portion of its
13 value or use or to dispose of the property such as
14 to make it unlikely that the owner will recover it.
15 There's been no evidence produced of that here.
16 The best case scenario for the State is that the
17 car was taken and found within 24 hours. That
18 there was no -- nothing about those circumstances
19 that indicated a permanent intent to deprive the
20 owner of the property. So, for all of those
21 reasons which have been elaborated upon in the
22 written motion, we ask the Court to enter Judgment

1 of Acquittal as to all counts and specifications.

2 THE COURT: Thank you, Mr. Juhasz.

3 The State?

4 MR. BECKER: I will address the last
5 few points that Mr. Juhasz made first. First of
6 all, with respect to the aggravated burglary and
7 aggravated robbery, ample case law exists that it
8 is the possessory interest, is not just the owner,
9 but the possessory interest. I think the State has
10 proven well beyond a reasonable doubt, that Mr.
11 Fingerhut had a possessory interest, not only in
12 the home, but also in the silver Chrysler 300-M, as
13 evidenced by the car keys, the lengthy testimony
14 from the individuals who repaired and took care of
15 those automobiles, and recognized his particular
16 set of keys, which were found in the ignition. So,
17 I think it is clear that Mr. Fingerhut had a
18 possessory interest not only in the home but also
19 in the automobile that was taken from him by
20 Mr. Jackson.

21 Second of all, with respect to the
22 residence and the burglary, even if assuming

1 arguendo that Miss Roberts had given consent to
2 Mr. Jackson to be in the house, there's ample case
3 law, State vs. Steffan, 1987, Ohio_State_3rd, 111,
4 also State vs. Lilley, 1999, 87 Ohio 3rd, State,
5 97, that a spouse may be criminally libel for a
6 trespass and/or burglary in the dwelling of the
7 other spouse, who is exercising custody or control
8 over the dwelling. Obviously, Mr. Fingerhut, that
9 was his home, that was his residence. He exercised
10 control and custody over that dwelling even though
11 the actual title and the legal title was not in his
12 name.____

13 Second of all, pursuant to State vs.
14 Steffan, whenever a Defendant lawfully enters a
15 residential premise, the privilege to be in or upon
16 those premises can infer, can be inferred to have
17 been revoked, where the Defendant in this case,
18 Mr. Jackson, the codefendant, committed a violent
19 felony directed against another person in the
20 premises. You simply don't have a right to permit
21 someone to come into any location to commit a
22 felony, so it is a nullity that she gave him

1 permission to be in the house for the purpose of
2 killing Mr. Fingerhut.

3 So, with those two issues addressed, we
4 would respectfully ask the Court to overrule that
5 aspect of the motion. Second of all, I think the
6 language of 2929.04(A)(7) makes it very clear, in
7 fact the definition of (A)(7) makes it clear, and I
8 believe that there are probably dozens of people on
9 Ohio death row, who are in fact aiders and
10 abettors. That is why the entire extinction exists
11 there and that is why the term is narrowed down to
12 principal offender, and disjunctively or with prior
13 calculation and design.

14 If you commit the offense with prior
15 calculation and design, obviously, you can be an
16 aider and abetter. That is the exact language.
17 The State not even attempting to argue, we have
18 been very straight forward with this Jury from the
19 Voir Dire process and the Jury instructions that
20 the Court has before it clearly indicate and the
21 State's position is that Miss Roberts absolutely,
22 positively was not the principal offender.

1 However, she does fall under the (A)(7) in that she
2 is an offender, any person who conspires with, and
3 commits complicity is an offender.

4 She's an offender and she has committed
5 this offense with probably more prior calculation
6 and design than this Court will ever see as long as
7 it sits on the bench.

8 With that said, we would respectfully
9 request that the motion be overruled in its
10 entirety and that the charges as indicted be
11 submitted to the Jury for their consideration.
12 Thank you.

13 THE COURT: You have last word, if
14 you wish, Mr. Juhasz.

15 MR. JUHASZ: Only two things. The
16 case as cited by Mr. Becker concerning the spousal
17 burglaries, I would quite agree that is what those
18 hold, but those have to do with situations where
19 spouses have, by Court order, been excluded by
20 civil protection order or some sort of restraining
21 order in a domestic action to deprive them of the
22 ability to go into that house. And their argument

1 is, of course, "Well, it is my house." That is a
2 wholly different situation from what presents
3 itself here. Finally, as far as the
4 specifications, the Taylor case talks about how you
5 should not boot strap cases and make them death
6 penalty cases. If you take the State's argument,
7 and six or seven of us sit around and plan a
8 homicide, but, among those 6 or 7 is Jerry Ingram,
9 and he's the guy who goes in and does it and
10 actually does the homicide, not (A)(3), not murder
11 for hire, and (A)(7), during the course of a
12 burglary or whatever, he goes in and does it.
13 Under the State's theory, then all six or seven of
14 us who sat around and planned that would get the
15 death penalty.

16 That is not what the death penalty was
17 intended for. That is not how the death penalty
18 has been implied. Even in Ohio, where the Supreme
19 Court has been less than strict sometimes in its
20 construction of the Statutes in order to affirm
21 capital convictions. But in that case, there would
22 be seven death penalties and not one. I have to

1 respectfully disagree with Mr. Becker when he says
2 that the statutory language permits this case, the
3 specification to go to the Jury. The statutory
4 language is very clear that it is the offender,
5 meaning the person who did it, and Taylor makes it
6 clear that using complicity to boot strap a
7 complicitor into quote the offender for (A)(7)
8 purposes is not permissible. Thank you.

9 THE COURT: Thank you. I am not
10 going to touch on each of these issues but just
11 briefly on the taking of the automobile. I think
12 the intent is found by the mere act, an old
13 asportation we were taught in law school. I don't
14 think the amount of time has any relevancy. The
15 person can enter into a premises with permission,
16 and become a trespasser by carrying out any
17 activity which would be considered in violation of
18 the permission that was granted. The Defense
19 raises a very interesting issue on this question of
20 principal offender, and the complicitor. The cases
21 cited, I think are distinguished. I'm not going to
22 get into that. The principle that you state,

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1 Mr. Juhasz, is valid to a degree, but I think in
2 the particular facts here the State has presented,
3 whether the Jury accepts the facts or not as
4 presented, but that there was a participation prior
5 to arguably during, although there's no evidence
6 that the Defendant was present at the time this
7 incident occurred, there's other evidence that they
8 have presented that the Jury could reasonably find
9 that she was participating to some degree, and that
10 she participated afterwards. The question of boot
11 strapping, I don't feel applies here as delineated
12 in the Taylor case, but that is a question for
13 another day.

14 My ruling will be that the Rule 29 motion
15 is denied. We have a Jury waiting. Is there any
16 other business now at this juncture before we
17 proceed with closing arguments? Nothing further?

18 MR. BECKER: I don't believe so.

19 MR. JUHASZ: The only thing I can
20 think is, so that we don't delay and I don't think
21 you guys have any objections to the Defense
22 Exhibits.

1 MR. BECKER: There was no objection.
2 There was one Joint Exhibit.

3 THE COURT: Also for the record, any
4 motions that the Court has not formally ruled on
5 that have been submitted are hereby denied.
6 (Jury brought into the Courtroom at 10:40 a.m.)

7 THE COURT: It is my understanding
8 that the State is formally resting your case at
9 this point.

10 MR. BAILEY: Yes, Your Honor. The
11 State rests.

12 THE COURT: And the Defense?

13 MR. INGRAM: The Defense would move
14 for the admission of Defendant's Exhibits 1 through
15 6 and with that the Defense would rest.

16 THE COURT: I believe those Exhibits
17 are not objected to by the State, so they will be
18 admitted, and go back with the Jury.

19 Ladies and gentlemen, the evidence in
20 this matter is before you. That will not be
21 supplemented. You have heard all of the evidence
22 that will be presented. Is the State ready to

1 begin your closing argument?

2 MR. BAILEY: Yes, Your Honor.

3 CLOSING ARGUMENT BY MR. BAILEY:

4 MR. BAILEY: May it please the
5 Court, counsel for the Defense, ladies and
6 gentlemen, will the real Donna Roberts stand up?
7 State's Exhibit 403 shows the real Donna Roberts,
8 the person in the photograph, the Defendant with
9 the heavy makeup and dyed hair. This is not a case
10 about murder for love. This is a murder for greed,
11 for over a half million dollars of insurance money.

12 The evidence has shown the real Donna
13 Roberts, the manipulative, lying, duplicitous,
14 scheming, greedy, evil, corrupt and depraved
15 murderess, the woman who uses people. An actress,
16 pretending to cry when it suits her, who feigns
17 grief and hysteria. A schemer who uses people to
18 satisfy her sexual desires, and in furtherance of
19 her plot to kill for money.

20 Love. Was she being faithful to her boy
21 toy convict, Nate Jackson, whom she sucked into her
22 plan of murder when she performed oral sex on

1 Santiago Mason, another ex-con? Or was she keeping
2 her tongue polished as she said in her tape
3 recorded telephone conversation with Nate Jackson?
4 Or was she setting up Santiago Mason as a fall guy
5 for the theft of a .38 caliber firearm, which was
6 consistent with the about to be missing murder
7 weapon?

8 Now, because this is closing argument,
9 because the State bears the burden of proving the
10 elements of the crimes charged by proof beyond a
11 reasonable doubt, we get to both open and to
12 conclude closing argument, and in between Defense
13 counsel will have the opportunity to address you.

14 I would like to just take a brief moment
15 here, on behalf of the people of the State of Ohio
16 and Trumbull County, and thank all of you for the
17 patience and the attention that you have shown. I
18 understand that at times, the case may move slowly.
19 There are times where there may be recesses where
20 the lawyers and the Court have to engage in legal
21 matters. But I'm going to ask you to bear with us
22 just a little while longer, because later this

1 afternoon this case is going to be in your hands
2 for deliberation and decision.

3 When we started this trial a few weeks
4 ago, we promised that the evidence would show the
5 following by proof beyond a reasonable doubt. That
6 before the Fall of 2001, the Defendant and Nate
7 Jackson began discussing a plan to kill Robert
8 Fingerhut for insurance money. The thing with all
9 of the zeros. Over 500 thousand dollars in
10 insurance policies. The evidence has shown that
11 the victim was totally unsuspecting of this plot.
12 He provided for the Defendant and you heard
13 Catherine Thomas, the lady from State Farm
14 Insurance tell you that he even planned to take out
15 additional insurance with the Defendant as a
16 beneficiary. You heard testimony that he even, and
17 it is mentioned in the letters -- you will have
18 these letters, prison letters, between the
19 Defendant and Nate Jackson. And you will have
20 phone calls, the tape recorded phone calls from the
21 prison. And all of the statements that she made to
22 the police afterward. But in all of those

1 statements and all of those letters and phone calls
2 and statements, it indicates that the victim even
3 bought the Defendant's parents a new car for their
4 anniversary. The Defendant wrote Nate Jackson that
5 she couldn't believe that she was such a good sneak
6 and liar.

7 The plan developed into a proposed
8 kidnapping and murder of Robert Fingerhut, using
9 handcuffs and a .38 caliber firearm. And the
10 Defendant was so vicious that she wanted to make
11 the victim watch while she performed oral sex on
12 Nate Jackson prior to killing Robert Fingerhut.
13 The Defendant planned to have sex at the Wagon
14 Wheel Motel with Nate Jackson when he got out of
15 prison. She planned to pick him up from prison and
16 take him to the Wagon Wheel Motel to a room with a
17 Jacuzzi and mirrors on the walls and the ceiling
18 above the bed, and she was to bring her thong
19 underwear with the rear portion of the -- the butt
20 end cut out.

21 And the Defendant, according to this
22 plan, was to get Nate Jackson a motel room for him

1 to lay low after the killing. And then, the joy of
2 joys, they would be able to wake up together on
3 Christmas morning back in 2001. And in fact, the
4 evidence has shown that the Defendant did in fact
5 pick up Nate Jackson at the prison on December 9,
6 2001, and she got him a room at the Wagon Wheel.

7 Remember the testimony of Jose Flores at
8 the Wagon Wheel and the Defendant, Nate Jackson
9 complained about the Jacuzzi and the heat, and they
10 asked to stay an hour later instead of checking out
11 at the normal time. And on December 10th of 2001,
12 the day before the killing, you remember the
13 testimony of Frank Reynolds, the part-time
14 Greyhound employee, whom Robert Fingerhut had given
15 a job, the Defendant had come in and asked Robert
16 Fingerhut for \$3,000 and he had refused to give it
17 to her. And the next day on December 11th of 2001,
18 the Defendant took Nate Jackson to the Greyhound
19 station in the morning, and that day, she took Nate
20 Jackson for a hair cut. She was seen there by
21 Chris Ellington at the Final Cut. And then out to
22 dinner at the Red Lobster that evening.

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1 You remember the testimony of Jill
2 Kenyon, the waitress at the Red Lobster and the
3 receipts? And Jimmie McCoy, the bus driver from
4 Greyhound, also saw the Defendant and the
5 codefendant together at the Greyhound station that
6 day. In room -- in a room, the codefendant was
7 behind the counter, they are trying to get out of
8 there, and the Defendant was having a hard time
9 getting off the computer, and that is when he met
10 this Nate. You can infer from the evidence from
11 all of the facts and the evidence from the
12 Defendant's own letters, that she gave Nate Jackson
13 the gun, the .38 that she talks about in the
14 letters, and that she let him into Robert
15 Fingerhut's house. The house that she shared with
16 Robert Fingerhut on Fonderlac here in Trumbull
17 County, Ohio, Howland Township.

18 And that day -- remember the testimony of
19 James Daniels over at the Greyhound station? The
20 Defendant even called the Greyhound station several
21 times, to make sure that the victim was going to be
22 on his way home, so that he would be there for Nate

1 Jackson to kill him.

2 And while Nate Jackson waited -- you can
3 infer that while Nate Jackson waited inside that
4 house for the victim, the house that the police
5 would later show no signs of forced entry, the
6 Defendant went out in the red Chrysler to set up an
7 alibi. And in fact, around the time of the murder,
8 she was seen driving slow by Bridget Paul, the lady
9 who noticed the way she held her hand out the
10 window while she drove with the cigarette, noticed
11 her going slow and not going to Giant Eagle as she
12 later told the police. And the Defendant went to
13 Wal-Mart on Elm Road, but not to Super K-Mart. She
14 didn't have time to go to Super K-Mart because she
15 was going to be taking Nate Jackson down to the
16 Days Inn to wash him up.

17 When the victim came home, he ended up
18 fighting for his life. You can determine that from
19 all of the testimony of Dr. Germaniuk and the
20 observations that were noted in his testimony and
21 the photographs, and the coroner's autopsy report.
22 The victim had a bullet wound in the shoulder

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1 blade, one wound in the webbing of his hand, and a
2 fatal wound in the head. And the coroner noted, or
3 the pathology noted scrapes and abrasions and cuts
4 on his face and hands. But during this fight, the
5 struggle that the victim fought for his life, Nate
6 Jackson also ended up getting shot in the left
7 index finger through the gloves that he wore. You
8 remember the testimony of Detective Sergeant, now
9 Chief Paul Monroe of the Howland Township Police
10 Department, where the Defendant admitted that she
11 had given Nate Jackson her cell phone and the
12 evidence has shown that Nate Jackson stole the
13 victim's silver Chrysler, the car that he was
14 driving that night, because the Defendant at that
15 time had been driving the red car, the red
16 Chrysler. And Nate Jackson took that silver
17 Chrysler along with the victim's set of keys, and
18 he dumped the car only a few blocks from where he
19 was later arrested. And the Defendant left in that
20 car, the victim's keys, and he left his own and
21 Robert Fingerhut's DNA in blood on the car visor
22 and on the trunk release. Remember the testimony

1 of Brenda Gerardi from BCI.

2 And then there was a series of telephone
3 calls that ensued between the Defendant's cell
4 phone in Nate Jackson's possession and the
5 Defendant's car phone and the red Chrysler. And
6 the Defendant ended up picking up the wounded Nate
7 Jackson and taking him over to the Days Inn in
8 Boardman.

9 Remember the testimony of Jeff Diamantes
10 at the Days Inn where the Defendant used the charge
11 card to rent Nate Jackson a room for a week.
12 Remember the testimony that the Defendant had had
13 training in treating gunshot wounds for a plastic
14 surgeon in Miami and in Israel and the evidence
15 indicates that she brought medical supplies.

16 MR. INGRAM: Objection. There's no
17 evidence of that.

18 MR. BAILEY: Statement to Detective
19 Paul Monroe.

20 THE COURT: Well, you can testify as
21 to the facts as brought up. It can be inferred,
22 but there's no testimony directly that she brought

1 medical supplies. The Jury will disregard the last
2 statement.

3 MR. BAILEY: Remember the testimony
4 of the police? The Defendant told them that she
5 had training in treating gunshot wounds for a
6 plastic surgeon in Miami and Israel, and you can
7 infer that she brought medical supplies and
8 bandaged up her wounded boy toy.

9 Remember the testimony of Jennifer
10 Robinson, the maid who cleaned the Days Inn room
11 and found the bloody bandages, put them in the
12 dumpster where they were recovered by the police
13 and taken to BCI and the DNA was consistent with
14 the codefendant, Nate Jackson. And then the
15 evidence indicates that the Defendant rushed back
16 to Trumbull County to act out her feigned grief
17 that she talked about in her letters for months.
18 The Defendant discovered the body of Robert
19 Fingerhut, the same Robert Fingerhut whom just
20 weeks before the Defendant had wished death for his
21 birthday gift in her letters, the same Robert
22 Fingerhut to whom she referred to as the Grinch,

1 who doled out the money. The same person for whom
2 she expressed so much hatred and animosity. The
3 same person whose hair, nose and breath she
4 couldn't stand.

5 The Defendant telephoned 911 and she was
6 so shocked and grief stricken that she couldn't
7 respond coherently to the operator, Paula Carson,
8 the 911 operator on that call. And paramedics and
9 Howland Township police officers responded to that
10 scene, and remember the officers, one of the
11 officers told you that the Defendant said, "Who
12 stabbed him in the face?" The testimony indicates
13 that when the officers began to discuss the case,
14 the Defendant would become silent, she would quit
15 her hysterical sobbing and screaming, and
16 apparently eavesdropped on them. You can infer
17 that she was interested in what the investigation
18 was developing. When the officers questioned her,
19 she failed to mention that she corresponded with a
20 convict, Nate Jackson, and she neglected to mention
21 that she engaged in a plan to kill Robert Fingerhut
22 for months for money.

1 Remember the testimony of Detective
2 Sergeant, now Chief Paul Monroe of the Howland
3 Township Police Department. When the officers
4 asked the Defendant for permission to search the
5 house and the car, the Defendant told them to do
6 whatever they had to do to catch the killer. And
7 the Defendant was taken to her brother's house that
8 night and the police collected all of the letters
9 that they discovered from the Defendant and from
10 Nate Jackson. And during the police search, Nate
11 Jackson used the Defendant's cell phone to call the
12 house and hung up when Detective Sergeant Paul
13 Monroe answered. The police were unaware at that
14 time of the incriminating documents that they had
15 seized for several days, until they were finally
16 able to sit down and read the letters.

17 Meanwhile, later that day, about 1:00 in
18 the afternoon, the Defendant began to throw out red
19 herrings and attempted to send the police on a
20 number of wild goose chases in several directions
21 in regards to the case. The Defendant had
22 previously filed a report alleging that Santiago

1 Mason -- you remember his testimony, an ex-con with
2 whom she had oral sex, but Mr. Mason had declined
3 the Defendant's further sexual advances, and she
4 claimed that he had stolen her .38 caliber firearm,
5 and she later attempted to smear the victim's
6 reputation, Roberts Fingerhut's reputation by
7 telling the police that he swung both ways and that
8 he had been threatened by crazies at the bus
9 station, and that she came up with the names Carlos
10 and Bobby. And the police, of course, found no
11 success in investigating those two names.

12 And finally, the police officers got a
13 chance to read some of the letters and that led to
14 the arrest of Nate Jackson and to the Defendant.

15 Now, let's take a look at the law. The
16 Defendant is charged here with a number of counts,
17 separate charges in an indictment. There are two
18 counts of aggravated murder with specifications,
19 special findings of fact of aggravating
20 circumstances. That the aggravated murder was
21 committed with prior calculation and design, and
22 during the course of an aggravated burglary, and

1 during the course of an aggravated robbery.

2 There are also two charges. There's a
3 charge of aggravated burglary with a firearms
4 specification and a charge of aggravated robbery
5 with a firearms specification, and the Defendant is
6 charged as a complicitor.

7 A complicitor. Someone who solicits or
8 procures or aids and abets another person in the
9 commission of the offense. And what do we have to
10 prove by proof beyond a reasonable doubt? We have
11 to prove certain elements that the crime happened
12 on or about Tuesday, December 11, 2001, and that is
13 the testimony in this case that it happened in
14 Trumbull County, Ohio. It happened in a house on
15 Fonderlac in Howland Township, here in Trumbull
16 County, Ohio. And that is the testimony.

17 We have to prove third, that it was the
18 Defendant who did this, the same person who is
19 sitting there. And you have got her letters. You
20 have got her taped phone calls from prison and all
21 of the other testimony and evidence.

22 We have to show that she acted purposely,

1 on purpose, and the Judge will give a detailed
2 instruction. And this is one of those rare cases.
3 usually, you have got to look at the person's acts,
4 because you can't go inside of their mind, but this
5 is one of those rare cases where you can go inside
6 a person's mind because you have got the letters
7 that she wrote showing her plan for months. It
8 shows her intent, her purpose. Her purpose to kill
9 with prior calculation and design, the scheme, this
10 detailed scheme that she developed.

11 And you will have a lot of letters.
12 There are a couple hundred, and I suggest that you
13 request a pair of latex gloves to read those
14 letters, because when you go through those letters,
15 you are going to find that there may be some bodily
16 substances on those letters from the Defendant and
17 from the codefendant. There may be vaginal
18 secretions and there may be semen. So I would
19 suggest you use a pair of gloves. That the
20 Defendant purposely aided and abetted and/or
21 solicited or procured Nate Jackson to commit the
22 aggravated murder of Robert Fingerhut with prior

1 calculation and design, and/or during an aggravated
2 burglary, and/or aggravated robbery and with a
3 working firearm as charged in the indictment.

4 These terms solicitor, procure -- the
5 Judge is going to instruct you on the law, but
6 basically we have got to show that she, this person
7 solicits or procures, they seek, ask, influence,
8 invite, attempt, lead on, bring pressure to bear,
9 get, obtain, induce, bring about or motivate
10 another person.

11 Aid and abet means that a person
12 supported, assisted, encouraged, cooperated with,
13 advised or incited another person to commit the
14 act.

15 The Judge is going to instruct you on
16 these elements of complicity. Basically, these are
17 the things that we have to show. Now, what about
18 the crime of aggravated burglary? Let's take a
19 look at aggravated burglary. We have to show again
20 it happened on or about a certain date, on December
21 11, 2001, in Trumbull County, Ohio, and that the
22 Defendant was the person who did this. And as a

1 complicitor, which means she solicited or procured
2 or aided and abetted Nate Jackson in doing this,
3 that there was an entry made by force, stealth or
4 deception. It was a trespass into an occupied
5 structure. In this case, 254 Fonderlac in Howland
6 Township in Trumbull County, Ohio, when Robert
7 Fingerhut was present, with purpose to commit any
8 criminal offense in the structure. In this case,
9 the criminal offense that structure would be the
10 aggravated murder of Robert Fingerhut. And that
11 the Defendant inflicted physical harm on Robert
12 Fingerhut, no question about physical harm. It
13 includes death, the victim was killed. He was shot
14 to death. And that they had a deadly weapon on or
15 about their person or under their control, a
16 working firearm. And that that particular firearm
17 was displayed, brandished, that they indicated they
18 possessed the firearm or used it to facilitate the
19 offense. No question that a working gun was used
20 to facilitate the offense of the aggravated murder
21 and the aggravated burglary.

22 Now, trespass. One of the elements is

1 that there be a trespass, and it doesn't matter if
2 the Defendant let in Nate Jackson with her
3 permission, because that house, they both jointly
4 lived there, both the Defendant and Robert
5 Fingerhut. And I expect the Judge is going to tell
6 you that where a Defendant lawfully enters a
7 residential premises with privilege to be in or on
8 this premise can be inferred to be revoked, where
9 the Defendant thereafter commits a violent felony
10 directed against another person in the premises,
11 who had the ability and authority to revoke the
12 privilege, when one enters the property of another
13 as an invitee or licensee, that person loses his
14 status as an invitee or licensee and becomes a
15 trespasser when it becomes evident that the purpose
16 of such entry is to commit a criminal offense
17 against another. So, if the codefendant went in,
18 doesn't matter if this Defendant let him in or the
19 victim let him in. She goes in there with the
20 intent to kill the victim and he does that. Then
21 that he's trespassing. And an occupied structure
22 means any house which is maintained as a permanent

1 or temporary dwelling, regardless of who owns it.
2 It doesn't matter if the Defendant is the legal
3 owner of the deed, it is also Robert Fingerhut's
4 house, because he was living there. So it was his
5 house, too.

6 Now, let's look at this term aggravated
7 robbery. There's some things taken. There was a
8 car, also a set of keys. For an aggravated
9 robbery, we have to show that it happened again on
10 or about December 11, 2001, in Trumbull County,
11 Ohio, that the Defendant as a complicitor, in
12 committing that theft offense, which would be the
13 theft of Robert Fingerhut's car. At that time, he
14 was using the silver car, because the Defendant was
15 using the red car. That the codefendant, Nate
16 Jackson had a deadly weapon, firearm on or about
17 his person or under his control, and he displayed,
18 brandished or indicated he possessed it or used it,
19 and inflicted serious physical harm on Robert
20 Fingerhut.

21 Now, for a theft offense, basically a
22 theft offense occurs and I expect the Court is

1 going to tell you that a theft occurs which a
2 person with purpose to deprive the owner of
3 property, knowingly obtains or exerts control over
4 the property without the consent of the owner. In
5 Ohio, ownership is possessory, you don't have to
6 have the legal title. In Ohio, even if you stole
7 from a thief, and even though the Defendant,
8 according to the evidence, held the certificates of
9 titles to the vehicles, what does the evidence
10 indicate? The evidence indicates from the two
11 fellows you heard from the vehicle purchase place,
12 that it was Robert Fingerhut who came in and
13 purchased the cars. He made an arrangement to take
14 care and maintain those cars and he drove those
15 cars. And that particular day, the evidence
16 indicates the Defendant was driving the red car, so
17 you can infer that the victim drove home from the
18 Greyhound station in the silver car. Because at
19 the time of the killing, according to all of the
20 evidence, Bridget Paul was seeing the Defendant out
21 and about driving real slow, right about that time,
22 setting up an alibi.

1 I expect the Court is going to tell you
2 that an owner means any person other than the actor
3 who is the owner of or has possession or control
4 of, or an interest in property, even if such
5 ownership, possession, control or interest is
6 unlawful.

7 Now, let's look at the charge, the
8 charges of aggravated murder. What do we have to
9 prove the Defendant as a complicitor? There are
10 two different charges here, two different theories
11 that the State is pursuing. First charge is
12 aggravated murder with prior calculation and
13 design. We have to prove, we have reasonable doubt
14 that it happened on or about Tuesday, December 11,
15 2001. Somewhere in the night. That it happened in
16 Trumbull County, Ohio. No question that the victim
17 according to the photographs that you are going to
18 see, Exhibit No. 7. State's Exhibit 57 and State's
19 Exhibit 27, show the injury or injuries, some of
20 the injuries to the victim, and indicate there was
21 a struggle and indicates that it happened there at
22 that house on Fonderlac in Howland Township,

1 Trumbull County, Ohio.

2 Again, we have to show that the
3 Defendant, the same person who is sitting at that
4 table, acted as a complicitor, and she acted
5 purposely. Again she did it on purpose, that she
6 caused the death of Robert S. Fingerhut, and she
7 did so with prior calculation and design.

8 And what does this mean? Prior
9 calculation and design. I expect the Judge is
10 going to tell you that prior calculation and design
11 means that the purpose to cause death was reached
12 by a definite process of reasoning in advance of
13 the homicide, when the process of reasoning must
14 have included a mental plan involving studied
15 consideration of the method and the means, with
16 which to cause the death of another. And as you
17 read those letters and you listen to those taped
18 calls, you will see this plan developing or the
19 plan, the process of reason, that shows studied
20 consideration of the method and the means, the .38
21 caliber firearm. Remember the testimony from BCI
22 that the bullets that were recovered, the fatal

1 bullet is consistent with a .38, .357 magnum, and
2 that a .38, where the Defendant had a couple of
3 .38's, and she accused Santiago Mason of taking the
4 .38, and in the letters, she said she's going to
5 get Nate Jackson a .38 to use.

6 To be prior calculation, there must have
7 been sufficient time and opportunity for the
8 planning of an act of homicide. Here this plan
9 developed over several months and the circumstances
10 surrounding the homicide would show a scheme
11 designed to carry out the calculated design to
12 cause the death. She doesn't get the insurance
13 money if he's not dead. No definite period of time
14 must elapse and no particular amount of
15 consideration must be given, but acting on the spur
16 of the moment, or after momentary consideration of
17 the purpose to cause the death is not sufficient.
18 It is not dropping the pen and catching it. It is
19 setting up a plan to drop the pen and pick it up.

20 Now there are two specifications. Well,
21 let me jump to the second count of aggravated
22 murder. Second theory of aggravated murder that

1 you can consider. It happened on Tuesday. This is
2 a felony murder. Tuesday, December 11, 2001, in
3 Trumbull County, Ohio, again, the Defendant as a
4 complicitor, that she acted purposely on purpose,
5 and the Judge will give you the detailed definition
6 of purposely, cause the death of Robert S.
7 Fingerhut during an aggravated burglary and/or
8 aggravated robbery, by having her codefendant
9 trespass in that residence to kill Robert
10 Fingerhut.

11 We don't have to show motive. But we
12 did. It was motive for greed, for money, for over
13 a half million dollars in insurance money,
14 \$550,000. Because everything else was in the
15 Defendant's name. She owned, she had title to the
16 house. She had the businesses, she had the cars.
17 It was greed, pure and simple. That is why she
18 wanted the victim dead. She wanted the extra
19 money.

20 The specifications. You have got two
21 specifications attached to each of these counts of
22 aggravated murder. Specifications are that the

1 aggravated -- we have to prove these beyond a
2 reasonable doubt, that the aggravated murder was
3 committed during -- in one specification an
4 aggravated burglary, and the other during an
5 aggravated robbery, and that the Defendant as a
6 complicitor, committed the aggravated murder with
7 prior calculation and design. Basically, those are
8 the things that we have to prove.

9 Now, let me list some points of evidence.
10 Points of evidence. Now there's certain points of
11 evidence that have been presented in the course of
12 this case that you can consider that indicate the
13 Defendant is guilty, which goes to show the
14 elements of the crimes charged and the
15 specifications. There are the insurance policies.
16 You have got State's Exhibit 323, the State Farm
17 Insurance Company policy for \$300,000. And State's
18 Exhibit 322, this is the certificate life policy
19 for 250 thousand dollars. And where do the police
20 find these? These are in the bedroom by the
21 Defendant's bed.

22 You had the fatal bullet, actually you

1 have got a number of bullets that are consistent
2 with a .38. Remember they were put in the BCI .38,
3 .357. And that is consistent with the Defendant's
4 plan, when you read the letters. And when you read
5 those letters, I suggest you read them in a
6 chronological fashion by date so that you see how
7 the plan develops, the letters and correspondence
8 between the Defendant and her codefendant. You
9 have got the photographs of the victim of Robert
10 Fingerhut that show the injuries. The body on the
11 floor in the house, the injuries on his head and
12 injuries, the fatal wound.

13 You will have the coroner's autopsy
14 report. Remember the cause of death. You have got
15 a glove of Nate Jackson that was recovered when he
16 got arrested. That gloves is important because it
17 indicates that Nate Jackson got shot at the scene,
18 because you have got that blood that was found in
19 the vehicle, the victim's car, after the killing.
20 The killer, Nate Jackson took something away from
21 that scene with him. He took the victim's blood,
22 that is where they got the DNA. They got it on

1 that trunk latch and the visor of the car along
2 with Nate Jackson's blood and DNA. So we have got
3 the DNA of Nate Jackson. You have got the DNA of
4 Robert Fingerhut.

5 Most important, one of the most important
6 things is you have got the letters from the
7 Defendant and you have got letters from Nate
8 Jackson. You go inside their minds, what is the
9 Defendant thinking? You have got phone calls from
10 prison. And you remember those interruptions,
11 "This call is being recorded by Lorain Correctional
12 Facility. Your call is being recorded." They
13 didn't care, they used their magic words to show,
14 deliver the package, the thing with all of the
15 zeros, they are cohorts. They were so devious in
16 their planning, so smart.

17 Remember criminals don't have to be
18 rocket scientists. You have got the Wagon Wheel
19 Motel. The Wagon Wheel, the classy motel with the
20 Jacuzzi that he was staying in and the mirrored
21 walls and ceiling above the bed, where she was
22 going to take her partner in crime and, she took

1 him there beforehand, to celebrate. You have got
2 the red thong panties that were discovered when
3 that room was cleaned, found by -- you heard Jose
4 Flores' testimony that those things were left
5 behind in that particular room. And remember the
6 telephone call from prison where Nate Jackson said,
7 "Hey baby, bring those panties, the ones with the
8 butt cut out," and he wanted specifically something
9 there and she was going to meet him because this
10 was part of her plan to kill Robert Fingerhut.

11 You have got the Defendant's cell phone.
12 Remember she told Paul Monroe that she loaned it to
13 Nate Jackson. She had forgot that she had done
14 that. But this is at the time that the murder is
15 going to go down. He's got the cell phone. She's
16 got her other phone in the red car that she's
17 driving, and she's out and about to set up the
18 alibi. You have got, yes, the red Chrysler that
19 the Defendant took to set up an alibi at the time
20 of the killing. You have got the 911 call where
21 the Defendant got a chance to play actress and
22 feign grief when she comes back and discovers

1 Robert Fingerhut's body. She couldn't even catch
2 her breath because she was in such shock in finding
3 poor Robert Fingerhut. You have got, according to
4 the testimony, the Defendant's lies. What did she
5 lie about? Little things like Giant Eagle, when
6 she told the cops she went to Giant Eagle. She
7 never did because what did Bridget Paul say? She
8 was driving real slow over there, but she never
9 turned in there. Red Lobster. She told the police
10 that she was dining alone. But low and hold the
11 lady at Red Lobster told you, no, she was there
12 with Nate Jackson.

13 She lied about Super K-Mart. She never
14 went there. She was taking the codefendant, Nate
15 Jackson to Days Inn to bandage him up. You can
16 infer from the evidence. She lied about Nate
17 Jackson because when the police asked her what she
18 knew, she omitted originally telling them anything
19 about Nate Jackson. Then when they asked her about
20 Nate Jackson, yes, Nate Jackson, and what did she
21 tell the police? She hadn't seen Nate Jackson the
22 day of the murder. She lied about her relationship

1 with Robert Fingerhut. What did she tell the
2 police? She told the police that they had a loving
3 relationship and the letters to Nate Jackson, it
4 was a hate relationship and she wanted him dead.
5 What did she tell the police about the insurance
6 policy? She even lied about that. She told them
7 that they had \$300,000 in insurance, but in fact
8 there was \$550,000 in insurance. These are
9 policies that were by her bed. She lied about the
10 Days Inn. She didn't tell the police that she went
11 to get a room for Nate Jackson to take care of his
12 injury.

13 Now, because we bear the burden of
14 proving the elements of the crimes and the
15 specifications charged by proof beyond a reasonable
16 doubt, we get the opportunity to do both opening
17 and closing argument, and now Defense counsel will
18 have an opportunity to address you.

19 MR. INGRAM: Your Honor, the Defense
20 waives argument and requests that the Jury be
21 immediately instructed.

22 THE COURT: I'm sorry?

1 MR. INGRAM: Waive argument and
2 request that the Jury be immediately instructed.

3 THE COURT: Okay. Gentlemen,
4 approach, please.

5 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
6 OF HEARING)

7 THE COURT: Ladies and gentlemen,
8 the next step is for me to read you the
9 instructions. These will take a half hour, 45
10 minutes, so let's take a ten minute break. You
11 step aside and come back, and once I have given you
12 the instructions, then you will be sequestered, and
13 I'll explain to you at the appropriate time what
14 all that entails. I think you have a pretty good
15 idea right now. Let's take ten minutes. Be back
16 at 20 till, and we'll conclude this trial. You are
17 not to discuss anything. Remember the admonition
18 given.

19 (Court in Recess at 11:25 a.m.)

20 JURY CHARGE:

21 THE COURT: Members of the Jury, you
22 heard the evidence and the arguments of counsel in

1 this case. The Court and the Jury have separate
2 functions. You decide the disputed facts and the
3 Court provides the instructions of law. Now it is
4 your sworn duty to accept these instructions and to
5 apply the law as it is given to you. You are not
6 permitted to change the law, nor to apply your own
7 conception of what you think the law should be.
8 Likewise, the Court may not interfere in any way
9 with your function as a juror.

10 Now a criminal case begins with the
11 filing of an indictment. The indictment informs
12 the Defendant that she has been charged with an
13 offense. The fact that it was filed may not be
14 considered by you for any purpose. The plea of not
15 guilty that was entered is a denial of the charges.
16 And specifications. And puts in issue all of the
17 essential elements of each charge and
18 specification.

19 The Defendant is presumed innocent unless
20 her guilt is established beyond a reasonable doubt.
21 The Defendant must be acquitted of an offense
22 unless the State produces evidence which convinces

1 you beyond a reasonable doubt of every essential
2 element of that offense, and specifications charged
3 in the indictment.

4 Now reasonable doubt is present when,
5 after you have carefully considered and compared
6 all of the evidence, you cannot say that you are
7 firmly convinced of the truth of the charge.

8 Reasonable doubt is doubt based on reason
9 and common sense. Reasonable doubt is not mere
10 possible doubt, because everything relating to
11 human affairs or depending on moral evidence is
12 open to some possible or imaginary doubt.

13 Now proof beyond a reasonable doubt is
14 proof of such character that an ordinary person
15 would be willing to rely and act upon it in the
16 most important of his or her own affairs. Now you
17 must determine the issues in this case from the
18 evidence. And the evidence is all the testimony
19 received from the witnesses, the Exhibits admitted
20 during the trial, and any facts that were agreed
21 upon by counsel, stipulations of fact.

22 Evidence itself may be either direct or

1 circumstantial or both. Now direct evidence is the
2 testimony given by a witness who has seen or heard
3 the facts to which he or she has testified. And
4 direct evidence also includes Exhibits admitted
5 during trial.

6 Circumstantial evidence is the proof of
7 fact or circumstance by direct evidence from which
8 you may reasonably infer other related or connected
9 facts, which naturally and logically follow
10 according to the common experience of mankind.

11 Now to infer or to make an inference, is
12 to reach a reasonable conclusion or deduction of
13 fact which you may, but are not required to make
14 from other facts, which you find have been
15 established by direct evidence. Now whether an
16 inference is made or not rests entirely with you.

17 Direct and circumstantial evidence are of
18 equal weight and probative value. Now the evidence
19 does not include the indictment or the opening
20 statements or closing arguments of counsel. The
21 opening statements and closing arguments of counsel
22 are designed to assist you, but they are not

1 evidence. A number of Exhibits and testimony
2 related to them have been introduced. You may
3 consider whether the Exhibits are the same objects
4 and in the same condition as originally taken by
5 the law enforcement officers during their
6 investigation. You will determine what weight, if
7 any, the Exhibits should receive in the light of
8 all of the evidence. Video tape and audio tape
9 recordings and testimony relating to them have been
10 introduced into evidence. You shall consider
11 whether the video tape and/or the audio tape is a
12 true record of what transpired at the time it was
13 taken. If you find that it is, you will then
14 determine what weight, if any, the video tape
15 and/or audio tape should receive in light of all of
16 the evidence.

17 Now statements or answers that were
18 stricken by the Court, or which you were instructed
19 to disregard are not evidence. And you must treat
20 them as though you never heard them. And you must
21 not speculate as to why the Court sustained the
22 objection to any question, or what the answer to

1 that question might have been. And you must not
2 draw any inference or speculate upon the truth of
3 any suggestions included in any question that was
4 not answered.

5 You are the sole judge of the facts of
6 this case, the credibility of the witnesses and the
7 weight of the evidence. To weigh the evidence, you
8 must consider of course the credibility of the
9 witnesses. These tests that you apply every day in
10 your lives include the appearance of each witness
11 upon the stand, his or her manner of testifying,
12 the reasonableness of their testimony, the
13 opportunity that person had to see, hear or know
14 about that to which they have testified, their
15 accuracy of memory, or lack thereof, their
16 frankness, intelligence, interest and bias if any,
17 but together with all of the circumstances and
18 facts surrounding the testimony. In applying these
19 tests, you will assign to the test of each witness
20 such weight as you deem proper.

21 You are not required to believe the
22 testimony of any witness simply because it was

1 given under oath. You may believe or disbelieve
2 all or any part of the testimony of any witness.
3 It is within your province to determine what
4 testimony is worthy of belief, and what testimony
5 is not worthy of belief.

6 Now generally a witness may not express
7 an opinion from the stand, however, one who follows
8 a profession or special line of work, may express
9 his or her opinion because of that person's
10 education, knowledge and or experience. Such
11 testimony is admitted for whatever assistance it
12 may provide to help you in arriving at a just
13 verdict. As with other witnesses, upon you alone
14 rests the duty to decide what weight is to be given
15 to the testimony of the experts. In determining
16 its weight, you may take into consideration that
17 expert's skill, experience, knowledge, veracity,
18 familiarity with the facts of this case, and the
19 usual rules for testing credibility and determining
20 the weight to be given to that testimony.

21 Now it is not necessary that the
22 Defendant take the witness stand in her own

1 defense. Miss Roberts has a Constitutional right
2 not to testify. The fact that the Defendant did
3 not testify may not be considered by you for any
4 purpose. The right of this Court to try the
5 Defendant depends on proof that the offense was
6 committed in Trumbull County, Ohio. This is called
7 venue. And venue is an essential element of the
8 offenses charged in the indictment. And as with
9 other elements, must be proven by the State beyond
10 a reasonable doubt.

11 Now getting to the indictment itself, the
12 Defendant is charged with a total of four counts
13 and six specifications, as follows. Count One,
14 complicity to aggravated murder, with two
15 specifications. Count Two, complicity to
16 aggravated murder with two specifications. Count
17 Three, complicity to aggravated burglary, with one
18 specification. Count Four, complicity to
19 aggravated robbery, with one specification.
20 Although the Counts are numbered in chronological
21 order, I feel it would make more sense to instruct
22 you on the complicity to aggravated burglary, and

1 the complicity to aggravated robbery counts before
2 I instruct you on the complicity to aggravated
3 murder counts, as some of the terms that I'm going
4 to define for you relative to those charges, will
5 also be used in the complicity to aggravated murder
6 instructions.

7 Now in Count Three of the indictment, the
8 Defendant has been charged with complicity to
9 aggravated burglary. Before you can find the
10 Defendant guilty, you must find beyond a reasonable
11 doubt that on or about the 11th day of December,
12 2001, and in Trumbull County, Ohio, the Defendant
13 purposely solicited, procured, aided and/or abetted
14 Nathaniel Jackson to commit the offense of
15 aggravated burglary. Aggravated burglary is the
16 trespass by force, stealth or deception in an
17 occupied structure, or in a separately secured or
18 separately occupied portion of an occupied
19 structure when another person, other than an
20 accomplice of the Defendant was present in that
21 structure, or separately secured or separately
22 occupied portion of the occupied structure and with

1 purpose to commit any criminal offense. And at
2 that time, the accomplice did inflict, or attempt
3 or threaten to inflict serious physical harm on
4 another, and/or the accomplice had a deadly weapon
5 on or about his person or under his control,
6 specifically in this case, a firearm.

7 I'll now define some terms for you. The
8 Defendant is charged with complicity to commit all
9 of the indicted offenses. Complicity means acting
10 with the kind of culpability required for the
11 commission of the offense. Soliciting or procuring
12 another to commit the offense, or aiding or
13 abetting another in committing the offense. Mere
14 association with the person or persons who
15 committed an offense are not enough to convict the
16 Defendant of complicity. To be a complicitor, one
17 must solicit, procure, aid and/or abet another in
18 accomplishing a common goal or purpose. To be a
19 complicitor, one must both be aware of and must
20 consent to that common goal or purpose. Before you
21 can convict the Defendant as a complicitor, it must
22 be proven beyond the existence of any reasonable

1 doubt that she sought, asked, influenced, invited,
2 attempted, led on, brought pressure to bear, got,
3 obtained, induced, brought about, motivated,
4 supported, assisted, encouraged, cooperated with,
5 advised, or incited Nathaniel Jackson to commit the
6 offenses charged in this indictment. Even approval
7 or acquiescence without either the expression of
8 agreement or doing some act, which in some way
9 contributes to the commission of the crime, is not
10 aiding and abetting. The Defendant must take some
11 role before the offense to cause the commission of
12 the offense.

13 Now the State may demonstrate that the
14 Defendant is guilty of complicity by direct or
15 circumstantial evidence or both. Although criminal
16 intent may be inferred from presence, companionship
17 and conduct before and after an offense is
18 committed, you may not infer that the Defendant is
19 guilty of complicity of an offense merely from the
20 fact that you find she was an accessory after the
21 fact. A complicitor to aggravated murder must
22 assist the principal before the offense, with the

1 purpose of causing death, and must intend to aid,
2 solicit, procure, or cause the principal to commit
3 the offense. In other words, an attempt to kill is
4 insufficient. There must also be an intent to
5 assist the principal offender to kill. Thus before
6 you can convict the Defendant, Donna M. Roberts, of
7 the offense of complicity to commit an offense, you
8 must find beyond a reasonable doubt that she in
9 some way solicited, procured, aided or abetted
10 Nathaniel Jackson by taking some role in causing
11 the commission of the offenses of aggravated
12 murder, aggravated burglary and aggravated robbery.

13 It is not a defense to a charge of
14 complicity that Nathaniel E. Jackson either has or
15 has not been convicted as the principal offender.
16 If you find that the State proved beyond a
17 reasonable doubt all of the essential elements of
18 the offense of complicity to commit aggravated
19 murder, then your verdict must be guilty. If you
20 find that the State failed to prove beyond a
21 reasonable doubt, any one of the essential elements
22 of the offense of complicity to commit aggravated

1 murder, then your verdict must be not guilty.
2 Solicit means to seek, to ask, to influence, to
3 invite, to attempt, to lead on, to bring pressure,
4 to bear. Procure means to get, obtain, induce,
5 bring about, motivate. Aided or abetted means
6 supported, assisted, encouraged, cooperated with,
7 advised or incited. Force means any violence,
8 compulsion or constraint used by any means upon or
9 against a person or thing to gain entrance.
10 Stealth means a secret, sly, or clandestine act to
11 gain entrance. Deception means knowingly deceiving
12 or cause another to be deceived by any false or
13 misleading misrepresentation or by any other
14 conduct, act or omission which creates, confirms or
15 perpetuates a false impression in another to gain
16 entrance. Trespass means knowingly entering the
17 land or premises of another without privilege to do
18 so. Any entrance or remaining in -- any entrance
19 or remaining in knowingly made in a structure of
20 another, that is unlawful if it is without the
21 authority, consent or privilege to do so, is
22 unlawful. If it is without authority, consent or

1 privilege. Where a Defendant lawfully entered a
2 residential premises, the privilege to be in or
3 upon this premises can be inferred to have been
4 revoked, where the Defendant thereafter commits a
5 violent felony directed against another person in
6 the premises, who had the ability and authority to
7 revoke the privilege. Where one enters upon the
8 property of another as an invitee or licensee, that
9 person loses his status as an invitee or licensee,
10 and becomes a trespasser, when it becomes evident
11 that the purpose of such entry is to commit a
12 criminal offense against another.

13 Occupied structure means any house,
14 building or other structure which is maintained as
15 a permanent or temporary dwelling regardless of who
16 owns it. A person acts purposely when it is his
17 specific intention to cause a certain result. It
18 must be established in this case, that at all times
19 in question, there was present in the mind of the
20 Defendant, a specific intention to cause a certain
21 result.

22 Purpose is a decision of the mind to do

1 an act with the conscious objective of producing a
2 specific result. To do an act purposely is to do
3 it intentionally and not accidentally. Purpose and
4 intent mean the same thing. Now the purpose with
5 which a person does an act is known only to that
6 person unless he or she expresses it to others or
7 indicates it by his or her conduct. The purpose
8 with which a person does an act is determined from
9 the manner in which it is done. The means and
10 weapons used, and all of the other facts and
11 circumstances in evidence. Proof of motive is not
12 required. The presence or absence of motive is one
13 of the circumstances bearing upon the purpose.

14 For the purposes of this case, complicity
15 to aggravated murder and complicity to aggravated
16 robbery, which are defined below are criminal
17 offenses. Physical harm to persons means any
18 injury, illness, or other physiological impairment
19 regardless of its gravity or duration. Deadly
20 weapon means any instrument, device or thing
21 capable of inflicting death and designed or
22 specifically adapted for use as a weapon or

1 possessed, carried or used as a weapon.

2 Now if you find that the State proved
3 beyond a reasonable doubt all of the essential
4 elements of the offense of complicity to aggravated
5 burglary, your verdict must be guilty of complicity
6 to aggravated burglary. If you find that the State
7 failed to prove any one of the essential elements
8 of the offense of complicity to aggravated
9 burglary, your verdict must be not guilty. If you
10 find the Defendant guilty of Count 3 of complicity
11 to aggravated burglary, it is your duty to
12 deliberate further and to decide one specification
13 attached to Count 3. You will proceed to consider
14 whether the specification has been again proven
15 beyond a reasonable doubt, if and only if, you
16 determine that the Defendant is guilty of
17 complicity to aggravated burglary. If your verdict
18 is not guilty, then you would not consider the
19 specification. If your verdict is guilty, the
20 Defendant may be found guilty or not guilty of the
21 specification.

22 The specification is that codefendant

1 Nathaniel E. Jackson did at the time of the
2 commission of the offense have a firearm on or
3 about his person or under his control, and he
4 displayed the firearm, brandished the firearm, or
5 used it to facilitate the offense.

6 Firearm means any deadly weapon capable
7 of expelling or propelling one or more projectiles
8 by the action of an explosive or combustible
9 propellant. Firearm includes an unloaded firearm,
10 and any firearm which is inoperable, but which can
11 be readily rendered operable. When deciding
12 whether a firearm is capable of expelling or
13 propelling one or more projectiles by the action of
14 an explosive or combustible propellant, you may
15 rely on circumstantial evidence, including, but not
16 limited to, the statements and actions of the
17 individual exercising control over the firearm.

18 On or about the Defendant, the
19 Defendant's or accomplice's person or under the
20 Defendant's or accomplice's control means that the
21 firearm was on the Defendant's or the accomplice's
22 person, or so near the Defendant, or accomplice, as

1 to be conveniently accessible, and within the
2 Defendant's or accomplice's immediate physical
3 reach. Thus, if as to this specification, you find
4 that the State proved beyond a reasonable doubt all
5 of the essential elements of the specification,
6 your verdict must be guilty of that specification.
7 If as to this specification, you find that the
8 State failed to prove beyond a reasonable doubt any
9 one of the essential elements of the specification,
10 then you must find the Defendant not guilty on that
11 specification.

12 In Count 4 of the indictment, the
13 Defendant is charged with complicity to aggravated
14 robbery. Before you can find the Defendant guilty
15 of complicity to aggravated robbery, you must find
16 beyond a reasonable doubt that on or about the 11th
17 day of December, 2001, at Trumbull County, Ohio,
18 the Defendant purposely solicited, procured, aided
19 or abetted Nathaniel Jackson to commit the offense
20 of aggravated robbery.

21 Aggravated robbery is attempting or
22 committing a theft offense and having a deadly

1 weapon on or about your person or under that
2 person's control and either brandished it or used
3 it or that the Defendant inflicted serious physical
4 harm on others.

5 I have defined previously for you
6 solicited, as well as procured, aided, abetted, and
7 purposely. Attempt is when one purposely does
8 anything which is an act constituting a substantial
9 step in a course of conduct planned, to culminate
10 in his commission of the crime. To constitute a
11 substantial step, the conduct must be strongly
12 corroborative of the actor's criminal purpose.

13 While committing or attempting to commit
14 means that the theft must occur as part of acts
15 leading up to or occurring during or immediately
16 subsequent to the offense set out in this charge.
17 And that the theft was directly associated with the
18 offense set out in this charge.

19 A theft offense occurs when a person with
20 purpose to deprive the owner of property knowingly
21 obtains or exerts control over that property
22 without the consent of the owner. A person acts

1 knowingly regardless of his purpose when he's aware
2 that his conduct will probably cause a certain
3 result, or that he's aware that his conduct will
4 probably be of a certain nature. A person has
5 knowledge of circumstances when he's aware that
6 such circumstances probably exist.

7 Now again, since you cannot look into the
8 mind of another person, knowledge is determined
9 from all of the facts and circumstances in
10 evidence. You will determine from these facts and
11 circumstances, whether there existed at the time in
12 the mind of the Defendant, the intent to obtain or
13 exert control over the property. Owner means any
14 person whether -- owner means any person, other
15 than the actor who is the owner of or who has
16 possession or control of or any license or interest
17 in property or services even if such ownership,
18 possession, control, license or interest is
19 unlawful.

20 I have defined deadly weapon previously
21 for you.

22 Serious physical harm to persons means

1 any of the following. Any mental illness or
2 condition of such gravity as would normally require
3 hospitalization or prolonged psychiatric treatment.
4 Two, any physical harm that carries a substantial
5 risk of death; three, any physical harm that
6 involves some permanent incapacity or the partial
7 or total or that involves some temporary
8 substantial incapacity. Four, any physical harm
9 that involves some permanent disfigurement or that
10 involves some temporary serious disfigurement.
11 Five, any physical harm that involves acute pain of
12 such duration as to result in substantial
13 suffering, or that involves any degree of prolonged
14 or intractable pain; and six, death.

15 If you find that the State proved beyond
16 a reasonable doubt all of the essential elements of
17 complicity to aggravated robbery, your verdict must
18 be guilty to complicity to aggravated robbery. If
19 you find that the State failed to prove any one of
20 the essential elements of the offense of aggravated
21 robbery, it is your duty to deliberate further and
22 decide -- I'm sorry, I misread that. If you find

1 the Defendant guilty of Count 4 of complicity to
2 aggravated robbery, it is then your duty to
3 deliberate further and decide one specification
4 attached to Count 4.

5 You will proceed to consider whether the
6 specification has been proven beyond a reasonable
7 doubt, if and only if, you determine that the
8 Defendant is guilty of complicity to aggravated
9 robbery. If your verdict is not guilty, then you
10 would not consider the specification. If your
11 verdict is guilty, the Defendant may be guilty or
12 not guilty of the specification.

13 The specification is that codefendant,
14 Nathaniel Jackson, did at the time of the
15 commission of the offense, have a firearm on or
16 about his person or under his control, and
17 displayed the firearm, brandished the firearm, or
18 used it to facilitate the offense. All relevant
19 terms have been previously defined for you. Thus,
20 if as to this specification, you find that the
21 State proved beyond a reasonable doubt all of the
22 essential elements of the specification, your

1 verdict must be guilty of the specification.

2 If, as to this specification, you find
3 that the State failed to prove beyond a reasonable
4 doubt any one of the essential elements of this
5 specification, then you must find the Defendant not
6 guilty of that specification.

7 In Count 1 of the indictment, the
8 Defendant is charged with complicity to aggravated
9 murder. With respect to this Count, complicity to
10 aggravated murder, complicity to aggravated murder
11 is purposely soliciting, procuring, aiding and/or
12 abetting another to cause the death of another
13 person with prior calculation and design. Before
14 you can find the Defendant guilty of complicity to
15 aggravated murder in this Count 1, you must find
16 beyond a reasonable doubt that on or about the 11th
17 day of December, 2001, and in Trumbull County, the
18 Defendant purposely solicited, procured, aided and
19 or abetted another, to cause the death of Robert S.
20 Fingerhut, with prior calculation and design.

21 I have previously defined solicited,
22 procured, aided, abetted and purpose for you. In

1 addition, if a wound is inflicted upon a person
2 with a deadly weapon in a manner calculated to
3 destroy life, or inflict great bodily harm, the
4 purpose to cause death, may be inferred from the
5 use of the weapon. No person shall be convicted of
6 aggravated murder unless she's convicted
7 especially -- let me start that over. No person
8 shall be convicted of aggravated murder unless
9 she's specifically found to have intended to cause
10 the death of another.

11 Prior calculation and design means that
12 the purpose to cause death was reached by a
13 definite process of reasoning in advance of the
14 homicide, which process of reasoning must have
15 included a mental plan involving studied
16 consideration of the method and the means by which
17 to cause the death of another.

18 To be prior calculation, there must have
19 been sufficient time and opportunity for the
20 planning of an act of homicide and the
21 circumstances surrounding the homicide must show a
22 scheme designed to carry out the calculated

1 decision to cause the death.

2 Now, no definite period of time must
3 elapse and no particular amount of consideration
4 must be given. But acting on the spur of the
5 moment, or after momentary consideration of the
6 purpose to cause death is not sufficient.

7 Now the State charges that the act of the
8 Defendant caused the death of Robert S. Fingerhut.
9 Cause is an essential element of the offense.
10 Cause is an act or failure to act, which in a
11 natural and continuous sequence produces the death,
12 and without which it would not have occurred. If
13 you find that the State proved beyond a reasonable
14 doubt, all of the essential elements of the offense
15 of complicity to aggravated murder as charged in
16 this Count, your verdict must be guilty as to that
17 Count. If you find that the State failed to prove
18 beyond a reasonable doubt any of the essential
19 elements of the offense of complicity to aggravated
20 murder as charged in Count 1, your verdict must be
21 not guilty as to that offense.

22 If you find the Defendant not guilty of

1 complicity to aggravated murder as charged in this
2 Count, you will not consider any specification
3 relative to this Count. If you find the Defendant
4 guilty of complicity to aggravated murder as
5 charged in Count 1, it is your duty to deliberate
6 further and to decide additional factual questions,
7 which we call specifications relative to this
8 Count.

9 Now Count 1 sets forth two
10 specifications. You will proceed to consider
11 whether each specification to this Count, has been
12 proven beyond a reasonable doubt, if and only if,
13 you determine that the Defendant is guilty of this
14 Count. If your verdict is not guilty, as I said,
15 you are not to consider the specification. If your
16 verdict is guilty as to this Count, the Defendant
17 may be found guilty or not guilty of any one or all
18 of the specifications in that Count.

19 Specification One to Count 1, charges
20 that the Defendant committed the aggravated murder,
21 as a complicitor and that the aggravated murder was
22 committed while the accomplice was committing,

1 attempting to commit, or fleeing immediately after
2 committing aggravated burglary. And that the
3 Defendant solicited, procured, aided or abetted the
4 accomplice to the aggravated murder with prior
5 calculation and design.

6 All of those relevant terms have been
7 previously defined for you. Before you can find
8 the Defendant guilty of Specification One to Count
9 1, you must find that the State has proven beyond a
10 reasonable doubt that the Defendant committed the
11 aggravated murder as a complicitor, and that the
12 aggravated murder was committed while the
13 accomplice was committing, attempting to commit or
14 fleeing immediately after committing aggravated
15 burglary. And that the Defendant solicited,
16 procured, aided or abetted the accomplice to the
17 aggravated murder with prior calculation and
18 design.

19 If you find the State proved beyond a
20 reasonable doubt all of the essential elements of
21 this specification, then your verdict must be
22 guilty as to that specification. If you find that

1 the State failed to prove beyond a reasonable doubt
2 any one of the essential elements of this
3 specification, your verdict must be not guilty as
4 to that specification.

5 Specification Two to Count 1 charges that
6 the Defendant committed the aggravated murder as a
7 complicitor and that the aggravated murder was
8 committed while the accomplice was committing,
9 attempting to commit, or fleeing immediately after
10 committing aggravated robbery. And that the
11 Defendant solicited, procured, aided or abetted the
12 accomplice to the aggravated murder, with prior
13 calculation and design.

14 Again, I have defined the necessary terms
15 previously. Before you can find the Defendant
16 guilty of Specification Two to Count 1, you must
17 find that the State has proven beyond a reasonable
18 doubt that the Defendant committed the aggravated
19 murder as a complicitor, and that the aggravated
20 murder was committed while the accomplice was
21 committing, attempting to commit, or fleeing
22 immediately after committing aggravated robbery.

1 And that the Defendant solicited, procured, aided
2 or abetted the accomplice to the aggravated murder
3 with prior calculation and design.

4 If you find that the State proved beyond
5 a reasonable doubt all of the essential elements of
6 this specification, then your verdict must be
7 guilty as to that specification. If you find that
8 the State failed to prove beyond a reasonable doubt
9 any one of the essential elements of the
10 specification, your verdict must be not guilty as
11 to that specification.

12 In Count 2 of the indictment, the
13 Defendant is charged with complicity to aggravated
14 murder. With respect to this Count, aggravated
15 murder is purposely soliciting, procuring, aiding
16 and/or abetting an accomplice in causing the death
17 of another, while the accomplice was committing,
18 attempting to commit, or fleeing immediately after
19 committing aggravated robbery and or aggravated
20 burglary.

21 Before you can find the Defendant guilty
22 of complicity to aggravated murder on Count 2, you

1 must find beyond a reasonable doubt that on or
2 about the 11th day of December, 2001, and in
3 Trumbull County, Ohio, the Defendant purposely
4 solicited, procured, aided and/or abetted another,
5 causing the death of Robert S. Fingerhut, while the
6 accomplice was committing, attempting to commit, or
7 fleeing immediately after committing, or attempting
8 to commit aggravated robbery, and/or aggravated
9 burglary.

10 Now I have previously defined all
11 relevant terms. If you find that the State proved
12 beyond a reasonable doubt, all of the essential
13 elements of the offense of complicity to aggravated
14 murder as charged in Count 2 of the indictment,
15 your verdict must be guilty as to that Count. If
16 you find the Defendant not guilty of complicity to
17 aggravated murder as charged in this Count, or you
18 are unable to reach a verdict as to this Count, you
19 will not consider any specification relative to
20 Count 2. Now there's attached to Count 2 on the
21 first specification, charges that the Defendant
22 committed the aggravated murder as a complicitor,

1 and that the aggravated murder was committed while
2 the accomplice was committing, attempting to commit
3 or fleeing immediately after committing aggravated
4 burglary and that the Defendant solicited,
5 procured, aided or abetted the accomplice to the
6 aggravated murder with prior calculation and
7 design.

8 Again, I have given you all of the
9 necessary meanings of those words. Before you can
10 find the Defendant guilty of Specification One to
11 Count 2, you must find that the State has proven
12 beyond a reasonable doubt that the Defendant
13 committed the aggravated murder as a complicitor
14 and that the aggravated murder was committed while
15 the accomplice was committing, attempting to
16 commit, or fleeing immediately after committing
17 aggravated burglary. And that the Defendant
18 solicited, procured, aided and/or abetted the
19 accomplice to the aggravated murder, with prior
20 calculation and design.

21 All terms have been previously defined.
22 Specification Two to Count 2 charges that the

1 Defendant committed the aggravated murder while
2 committing, attempting to commit, or fleeing
3 immediately after committing aggravated robbery,
4 and that the Defendant was either the principal
5 offender in the commission of the aggravated
6 murder, or if not the principal offender, that she
7 committed the aggravated murder with -- I'm sorry,
8 that he committed the aggravated murder with prior
9 calculation and design.

10 All of the relevant terms, again, I have
11 previously defined for you. Before you can find
12 the Defendant guilty of Specification Two on Count
13 2, you must find that the State has proven beyond a
14 reasonable doubt that the Defendant committed the
15 aggravated murder as a complicitor, and that the
16 aggravated murder was committed while the
17 accomplice was committing, attempting to commit or
18 fleeing immediately after committing aggravated
19 robbery, and that the Defendant solicited,
20 procured, aided or abetted the accomplice to the
21 aggravated murder with prior calculation and
22 design.

1 If you find that the State proved beyond
2 a reasonable doubt all of the essential elements of
3 this specification, then your verdict must be
4 guilty as to that specification. If you find that
5 the State failed to prove beyond a reasonable doubt
6 any one of the essential elements of the
7 specification, your verdict must be not guilty as
8 to that specification.

9 Now the specification set forth in the
10 indictments each constitute a separate and distinct
11 matter. You must consider each Count and each
12 Specification and the evidence applicable to each
13 Count and each Specification separately, and you
14 must state your finding as to each Count and each
15 Specification uninfluenced by your verdict as to
16 the other Counts or Specifications. Except that
17 should you find the Defendant not guilty of a
18 particular Count, you will not consider the
19 Specification or Specifications attached to that
20 Count. The Defendant may be found guilty or not
21 guilty of any of the offenses, or any of the
22 specifications.

1 Now we have three remaining alternate
2 jurors that were selected to serve on this Jury
3 panel. It will be necessary for all of the
4 alternate jurors to remain until this Jury has
5 returned its verdict in Open Court. You will be
6 conducted to the office of the Jury Commissioner or
7 some other suitable location and will remain under
8 the direction of the bailiff until this Jury has
9 reached its verdict.

10 You are reminded not to discuss this case
11 with anyone or with each other, or to tell anyone
12 how you would have voted until after this Jury has
13 returned its verdict. You may not discuss -- well,
14 I'll explain to the alternates in at a more
15 appropriate time a few other items. It is not
16 necessary that I do that at this point in time.

17 To the Jury, you may not discuss or
18 consider the subject of punishment during your
19 deliberations. Your duty is confined to the
20 determination of whether the Defendant is guilty or
21 not guilty of the counts and the Specifications.

22 You must not be influenced by any

1 consideration of sympathy or prejudice. It is your
2 duty to carefully weigh the evidence, to decide all
3 disputed questions of fact, to apply the
4 instructions of the Court to your findings and to
5 render your verdict accordingly. And fulfilling
6 your duty, your efforts must be to arrive at a just
7 verdict.

8 Consider all of the evidence. And make
9 your findings with intelligence, and impartiality,
10 without bias, sympathy or prejudice, so that both
11 the State of Ohio and the Defendant, Donna Marie
12 Roberts, will feel that their case was fairly and
13 impartially tried.

14 And once again, if during the course of
15 this trial, the Court has said or done anything
16 that the Jury has misinterpreted as the Court's
17 view on the evidence, please disregard that.
18 Disregard that because it would be most improper
19 for a Judge to take any position on the evidence.
20 That is not my function. That is your function.
21 My job is dealing with the law. So, any indication
22 that you may have perceived that I had any opinion

1 at all on the evidence, you are to set that aside
2 because that was not my intention.

3 Now, it may be difficult to remember all
4 of the instructions that I have given to you. They
5 seem repetitious, like I'm going over the same
6 thing, but if you read over them, they each cover a
7 specific point. To assist you, you will have a
8 copy of these instructions with you in the Jury
9 room. If during your deliberations you have a
10 question, it should be discussed in privacy of your
11 Jury room, and any question submitted to the Court
12 should not reflect the status of your deliberation,
13 it should be reduced to writing so that there will
14 be no misunderstanding as to what the question is
15 as to what you request. It should be signed by the
16 foreperson, with the date also. And it should then
17 be delivered to the bailiff who will submit it to
18 the Court.

19 Now the bailiff, throughout the course of
20 your deliberations will have contact with you
21 merely for your comfort. She's not able to answer
22 any questions, none should be put to her. If

1 anyone should forget that, do not think she's rude
2 by ignoring the question.

3 Now your initial conduct upon entering
4 the Jury room is a matter of importance. It is not
5 wise to immediately express a determination or to
6 insist upon a certain verdict, because if you do
7 so, and your sense of pride is aroused, you may
8 hesitate to change your position if you later
9 decide you were initially wrong. You should
10 consult with one another, consider each other's
11 views, and deliberate with the objective of
12 reaching an agreement, if you can do so, without
13 disturbing your individual judgment.

14 Each of you must decide this case first
15 of all, by yourself, in your own mind. But you
16 should do so only after a discussion and the
17 consideration of the case, by discussing it with
18 your fellow jurors.

19 You should not hesitate to change an
20 opinion if you become convinced that you are wrong.
21 But just as important, you should not surrender
22 honest convictions just to be congenial or to just

1 go along with the other people's view on a verdict.

2 You will have with you in the Jury room
3 ten verdict forms. I am now going to briefly read
4 over those for you. Each of these forms I think
5 are self-explanatory, but it is customary to go
6 over them.

7 You have the caption of the case, which
8 identifies it for our records. You have Jury
9 Verdict, this first one reads, "Count 1, complicity
10 to aggravated murder, prior calculation and design.
11 We the Jury, having been duly empaneled, to well
12 and truly try the above cause and true deliverance
13 make, do find the Defendant, Donna M. Roberts," you
14 find a blank with an asterisk, and the asterisk
15 says, "insert in ink either Not Guilty or Guilty
16 Beyond a Reasonable Doubt," whatever your verdict
17 is. And it continues, "on Count 1, complicity to
18 commit aggravated murder, in the manner and form
19 she stands charged in the indictment."

20 Now you will note that there are 12
21 verdict lines, one for each juror. This being a
22 criminal case, of course, you must have a unanimous

1 verdict of all 12 to arrive at any conclusion. On
2 any of the verdict forms that there are all 12
3 signatures written, if that occurs, it should also
4 be dated. If you do not have all 12 members
5 concur, then you have not arrived at a verdict.

6 These all read the same. They have all
7 the information with the asterisk and they cover
8 each of the counts, and all of the specifications.
9 Specifications are set forth on a different verdict
10 form.

11 Laurie, do you want to stand up and be
12 sworn? Miss Brown, please raise your right hand.
13 Do you solely swear that you will, to the best of
14 your ability, keep the persons sworn as jurors on
15 this trial from separating from each other, and
16 that you will not suffer any communications to be
17 made to them, or any of them, orally or otherwise,
18 except by the order of this Court, or to ask them
19 if they have agreed on their verdict, and that you
20 will not, before they render their verdict,
21 communicate to any person the state of their
22 deliberations or the verdict they have agreed upon,

1 so help you God?

2 LAURIE BROWN: I will.

3 THE COURT: To the 12 members of the
4 Jury and to the alternates. From this time on, you
5 will be in the charge of our Bailiff, Laurie Brown.
6 You will follow her instructions in every regard.
7 If you desire to communicate with the Court, you
8 should do so in writing, and only after careful
9 consideration of the language used so that the same
10 does not unnecessarily disclose the status of your
11 deliberations. And making sure that any inquiry is
12 clear and unambiguous. These requests should be
13 submitted in writing and signed by the foreperson.

14 Now during all of the breaks in your
15 deliberations, you will follow the instructions of
16 the Bailiff, but do not discuss the case with her,
17 or even among yourselves during the breaks. Any
18 discussion that you have on this case, should only
19 occur when all 12 of you are back in the Jury room.
20 If some of you should be out for some reason on a
21 break, few remaining there cannot talk about the
22 case. You have to all 12 be together to talk about

1 anything.

2 Now the Court will place in your
3 possession the Exhibits and the verdict forms. You
4 will also have with you in the Jury room a VCR, a
5 T.V. and a cassette player. The foreperson will
6 retain possession of these records, including the
7 verdicts and return them to the Court. As a
8 practical matter, the foreperson selected can't
9 carry everything back in here, but just hang on to
10 the verdict forms. We'll see that the evidence is
11 handled in due course. The foreperson is called
12 upon to see that your discussions are orderly, and
13 that each juror has an opportunity to discuss the
14 case and to cast his or her vote. Otherwise the
15 authority of the foreperson is the same as any
16 other jurors. Some of us are more reluctant to
17 express our opinions, some of us you can't shut up.
18 The foreperson should make sure that everybody
19 participates. You are going to have some people,
20 we always do, that don't like to force their
21 opinion on people or even discuss it. The
22 foreperson should have everybody engage in your

1 discussions. That is the value of the Jury is
2 having 12 minds in there. And likewise, if
3 somebody speaks too often, a friendly reminder
4 might be available. So until your verdict is
5 announced in Open Court, you are not to disclose to
6 anyone else the status of your deliberations or the
7 nature of your verdict.

8 After you retire, select a foreperson and
9 whenever all 12, and I repeat all 12 agree upon
10 your verdicts, you will sign the verdicts in ink,
11 date them, and advise the Bailiff. You will then
12 be brought back into the Jury room, and your
13 verdict will be read in Open Court.

14 Ladies and gentlemen of the Jury, are all
15 of you able to begin your deliberations?

16 (All nodded affirmatively)

17 THE COURT: I see everyone nodding
18 their head. Very good.

19 Gentlemen, approach the bench, please.

20 (SIDE BAR DISCUSSION, OFF THE RECORD AND
21 OUT OF HEARING)

22 (In-chambers at 12:50 p.m.)

1 THE COURT: We're in-chambers, out
2 of the presence of the Jury. All counsel and the
3 Defendant are present.

4 MR. JUHASZ: Your Honor, if it
5 please the Court, with regard to the aggravated
6 robbery count that was read to the Jury, the phrase
7 "deprive" was not defined. It is set forth in OJI
8 and was set forth in our submitted instructions.

9 THE COURT: Do you want me to give
10 that?

11 MR. JUHASZ: It should come as part
12 of theft offense. On page 12 the Court defines
13 theft offense and says it occurs when a person with
14 purpose to deprive the owner. I think that should
15 be of property. Knowingly obtains or exerts
16 control over the property without the consent of
17 the owner. OJI then has a separate subsection
18 which defines deprive. I mentioned that this
19 morning in my Rule 29 motion. So we would request
20 that that be included.

21 Secondly, my hearing of the Court's
22 reading of the aggravated robbery instruction is

1 that on page 13, you did read the paragraph that
2 says, "If you find the State failed to prove" --
3 I'm sorry, "If you find the State." On page 13. I
4 think the Court did read the paragraph that begins
5 "If you find that the State proved beyond a
6 reasonable doubt all of the essential elements of
7 the offense of complicity to aggravated robbery,
8 your verdict must be guilty". The next paragraph I
9 think because you began to jump ahead to the
10 specification, you neglected to read that
11 paragraph, which says, "If you find that the State
12 failed to prove any one of the essential elements,
13 then your verdict must be not guilty."

14 THE COURT: Do you wish me to add
15 that at this point?

16 MR. JUHASZ: Yes, Sir.

17 MR. BECKER: Do you want to read a
18 general statement, "If you find the State proved
19 beyond a reasonable doubt all of the essential
20 elements of any of the offenses your verdict must
21 be guilty and if you find that the State failed to
22 prove any of the essential elements of any of the

1 offenses" --

2 MR. JUHASZ: That is fine.

3 MR. BECKER: In a generic sense?

4 MR. JUHASZ: Yes.

5 THE COURT: Do you have that
6 contained in the instructions or what?

7 MR. BECKER: It is in the
8 instructions. Rather than specifically point to
9 each, I don't care.

10 MR. INGRAM: I agree.

11 MR. BECKER: Just reiterate, "If you
12 find that the State proved beyond a reasonable
13 doubt, all of the essential elements of any
14 offense, your verdict must be guilty. If you find
15 the State failed to prove any one of the essential
16 elements, your verdict must be not guilty of any of
17 the offenses." Rather than specifically
18 delineating each charge.

19 MR. BAILEY: On page 13, the first
20 two paragraphs.

21 THE COURT: I need a definition of
22 deprive.

1 (OFF THE RECORD)

2 THE COURT: For the record then, the
3 Court will give the definition of deprive and give
4 a generic on specification.

5 MR. INGRAM: Not on specification,
6 on counts.

7 THE COURT: Yes. All the Counts and
8 Specifications.

9 MR. JUHASZ: Also on page 14, when
10 the Court gave a definition of purpose in
11 connection with the infliction of a wound, we cited
12 in our proposed Jury instructions that while that
13 is a correct statement of the law, that State vs.
14 Coleman requires the Court to also instruct the
15 Jury that that inference is not conclusive.

16 THE COURT: There was something I
17 read to that very affect in here.

18 MR. BECKER: He's saying there
19 should be an additional phrase that you can infer
20 if the wound was inflicted in a deadly manner that
21 would calculate to destroy life. You can infer.
22 It is not binding.

1 MR. JUHASZ: Correct.

2 THE COURT: The Jury has to think,
3 after about ten minutes of those instructions, what
4 the hell is he going over all of the same stuff
5 for.

6 MR. JUHASZ: Never mind. We
7 withdraw that objection. The last objection we
8 had, of course, we're going to renew our objection
9 to the specifications, I'm not going to reiterate
10 all of the language, it was painfully obvious to me
11 as I listened to the Court read them that these
12 instructions are far outside of what I think the
13 statute permits, the cases that we cited this
14 morning and also and I didn't cite these cases this
15 morning, but the Enmund vs. Florida from the United
16 States Supreme Court even as it was modified
17 against Tison against Arizona, would not permit
18 these instructions. That is all I have to say
19 about that.

20 MR. BECKER: You are talking about
21 the (A)(7) instruction. The (A)(7) is pretty
22 clear, I think, based upon the language of what

1 principal offender is. Our law in Ohio defines
2 principal offender as the actual shooter. It
3 leaves open the possibility, I think clearly by
4 definition, that someone could be an aider and
5 abetter, provided they have prior calculation and
6 design they are still an offender to commit the
7 offense. The specification clearly delineates
8 between principal offender, which is very narrowly
9 defined as the actual killer. Well, the converse
10 of that, and the obvious flip side of that is that
11 a person can be the aider and abetter with prior
12 calculation and design and we think this is the
13 perfect case for that and it narrows down --

14 THE COURT: I agree with the
15 Prosecution, but the Defense raises a most
16 interesting argument on the Legislative intent. I
17 keep coming back to the State's position for this
18 reason. Assume that there were five people that
19 planned the Oklahoma bombing. Only Timothy McVey
20 drove the truck up and committed the thing. I
21 don't think for a minute that in light of that, now
22 that may be because of the emotionalism of the

1 thing rather than the logic, but in that case,
2 anyone who had anything to do with it is going to
3 go down as a principal offender, aider or abetter.
4 The argument that the Legislature intended only the
5 shooter or the perpetrator of the act receive the
6 death penalty, had a certain appeal, but I don't
7 know that the law that is presently drafted means
8 that. You are arguing that it does?

9 MR. JUHASZ: I'm not. I'm not.
10 First of all, I am inclined to agree with you on
11 the first thing that you said that I think it is
12 more than emotionalism in the argument as far as
13 the Oklahoma bombing; and second of all, the
14 principal offender is the actual killer. What I'm
15 saying is that if you are not the principal
16 offender and if it is by prior calculation and
17 design, that is sufficient under the (A)(7)
18 specification to warrant consideration of the death
19 penalty, but that Defendant has to be participating
20 actively in the acts that lead up to the homicide.
21 And in this case, there's no evidence that Donna
22 Roberts is even at the house when this happens.

1 That is why I cited those cases, because even the
2 cases that I cited, in some of those cases, they
3 said you can get the death penalty, but it is
4 because for example, in Ballew, they can't
5 determine whether it was Ballew or the other guy
6 who shot the person. Clearly they are both there.
7 She's not even here is my point.

8 THE COURT: For purposes of the
9 evidence, what the Jury accepts is another
10 question, but I feel quite clearly that the State
11 did put evidence before the Jury, that they could
12 conclude that she did participate to some degree.
13 It is an issue of fact rather than an issue of law
14 that you are arguing. Law based on fact.

15 MR. JUHASZ: I am done.

16 MR. BECKER: If you find the State
17 proved beyond a reasonable doubt all of the
18 essential elements of any offense or specification,
19 your verdict must be guilty of that offense or
20 specification. If you find that the State failed
21 to prove any one of the essential elements of any
22 of the offenses or specifications, your verdict

1 must be not guilty to that offense or specification
2 or to those offense or specifications.

3 MR. JUHASZ: That is fine.

4 MR. BECKER: We have changed the
5 language with Specification Two to Count 2 should
6 not have that principal language, offender. Do you
7 want him to read that again?

8 MR. INGRAM: I would put it in the
9 instructions.

10 MR. BECKER: We'll put it in the
11 instructions. I'll put that in the instructions.
12 We'll just have the Court read. You are going to
13 read the definition of deprive?

14 (OFF THE RECORD)

15 (End of In-chamber discussion)

16 THE COURT: No matter how hard we
17 try, we always seem to leave something out. I
18 failed to define for you what deprive means.
19 Deprive means to withhold property of another
20 permanently or for a period that appropriates a
21 substantial portion of its value or use, or to
22 dispose of property, so as to make it unlikely that

1 the owner will recover it. If you find that the
2 State proved beyond a reasonable doubt all of the
3 essential elements of any offense or specification,
4 your verdict must be guilty of that offense or
5 specification. If you find that the State failed
6 to prove any one of the essential elements of any
7 of the offenses or specifications, your verdict
8 must be not guilty to those offenses or
9 specifications. Gentlemen, does that satisfy?

10 MR. JUHASZ: Yes, Sir.

11 MR. BECKER: Yes, Sir.

12 THE COURT: Ladies and gentlemen,
13 you are now in the care and custody of Laurie
14 Brown. You will remain so until you have, at the
15 appropriate time returned your verdict in this
16 matter. If at any time you wish to take a break
17 back there, let Laurie know, but it is very
18 important that all of you remain on this floor
19 during any break. You can't go off by yourself.
20 You more or less have to stay in the vicinity that
21 you are in Miss Brown's care and custody. The
22 three of you must stay together and stay away from

1 anybody else. We'll try to accommodate you in a
2 place where there's no one around. Sometimes there
3 are other people around. Just read your books or
4 whatever you do. The Jury can please go with
5 Laurie. The alternates remain where you are at.
6 (Jurors began deliberations at 1:15 p.m.)

7 THE COURT: Raise your right hand.
8 The deputies present are Gary Bacon, Pete Pizzulo,
9 and Valarie Bayless. Do you solely swear that you
10 will, to the best of your ability keep the persons
11 sworn as jurors on this trial from separating from
12 each other, that you will not suffer any
13 communication to be made to them, or any of them
14 orally or otherwise, that you will not communicate
15 with them, or any of them, orally or otherwise,
16 except by the order of this Court, or to ask them
17 if they have agreed on their verdict, until they
18 have been discharged and that you will not orally
19 before they render their verdict, communicate to
20 any person, the state of their deliberations or the
21 verdict they have agreed upon, so help you God?

22 GARY BACON: I do.

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1 PETE PIZZULO: I do.

2 VALARIE BAYLESS: I do.

3 MR. JUHASZ: Only because of the bad
4 experience that I had in another Jury trial, I
5 would ask the Court to ask the Bailiff to see if
6 any jurors have cell phones and ask them to take
7 the cell phones from them.

8 MR. BECKER: I want to put on the
9 record, happy birthday to Jerry Ingram.

10 (At Jury room door with Judge at 6:50 p.m.)

11 THE COURT: It is quarter to seven
12 and I understand the Jury wishes to go to supper,
13 is that right? Or dinner, whatever is your
14 preference. I would ask you again to please
15 remember the admonition, stay together and we'll
16 see you back there after you have had time to get a
17 bite to eat.

18 (Court in recess at 6:50 p.m.)

19 (Jurors resumed deliberations at 8:15 p.m.)

20 (In-chambers at 9:50 p.m.)

21 THE COURT: We're in-chambers, about
22 15 minutes ago the Jury sent out one of the verdict

1 forms which is Count 1, Verdict on Specification
2 One, and asked a question as to the wording because
3 the way it has been submitted is it reads in
4 pertinent "Donna M. Robert is or is not guilty of
5 committing the offense of aggravated murder while
6 she was committing or attempting to commit." The
7 Court's instructions, I believe, pointed out that
8 she was a complicitor. That has been the theory of
9 the State's case throughout. She was not the
10 principal committing the offenses, but I agree that
11 the wording should be corrected to show her state
12 of complicity, rather than being principal
13 offender. These Jury forms have been changed to
14 show that the proper term of complicitor is
15 involved rather than principal. I'm going to
16 deliver the amended verdict forms and it has been
17 suggested that I read the following to them, which
18 I'm going to do.

19 MR. INGRAM: Submit in writing.

20 THE COURT: This will go back in
21 writing in response to your question. "Some of the
22 verdict forms have been changed. I trust that the

1 changes have answered your question."

2 MR. INGRAM: We have an objection
3 that Mr. Juhasz will put on the record, then I have
4 a request.

5 MR. JUHASZ: We object. The reasons
6 we have stated before based upon everything from
7 Enmund to Tison to Taylor to Guyton to Mapes to
8 Twyford. I think the Jury question just highlights
9 the point that we have tried to make, and now the
10 language that the Court is going to submit in the
11 amended Jury forms I guess in the language of
12 Taylor even boot straps more complicity into making
13 someone who is otherwise not eligible for the death
14 penalty, eligible for the death penalty. We think
15 that is in violation of the Eighth Amendment and
16 2929.04 (A)(7) and for those reasons, we object to
17 any modification of the Jury verdict forms.

18 MR. BECKER: I would just add for
19 the State, we feel that this is a true reflection
20 of what the charge was, and what the law provides
21 for, which is that an accomplice with prior
22 calculation and design, who is not the principal

1 offender is death eligible.

2 THE COURT: The objection is noted
3 for the record. You have a request, Mr. Ingram?

4 MR. INGRAM: I would request that
5 the Jury question and the verdict form to which it
6 was specifically attached, which is the form
7 entitled Jury Verdict Count 1, Verdict on
8 Specification One, along with the nine other
9 verdict forms all be marked Court's Exhibit 1 and
10 preserved for the record.

11 THE COURT: That will be granted.
12 (OFF THE RECORD)

13 MR. INGRAM: I previously requested
14 that the Jury question and the verdict form
15 entitled Jury Verdict Count 1, Verdict on
16 Specification One along with the nine other verdict
17 forms be marked Court's Exhibit 1 for Appellate
18 purposes. I amend that request and I only request
19 that the specific verdict form we're talking about,
20 which is Count 1, Verdict on Specification One,
21 along with the question be marked Court's Exhibit
22 1, but I would note for the record that there are

1 four verdict forms regarding specifications, and
2 that all four of those verdict forms have been
3 amended, and the Defense objects to the amendment
4 of each and every one of them.

5 THE COURT: That request for the
6 record is granted as I said.

7 (End of In-chamber Discussion)

8 (Typed answer submitted to the Jury.)

9 (Judge at Jury room door at 10:30 p.m.)

10 THE COURT: Laurie is going to take
11 you over to your rooms. She's made arrangements.
12 You get up in the morning, you are going to have
13 breakfast at eight. Have an enjoyable breakfast.
14 When we get over here -- we'll get you all over
15 here and get you started again. Remember the
16 admonition. You three alternates will be kept
17 separate still from the Jury and in the morning,
18 make arrangements for you to get back here.

19

20 (Jurors excused for the night at 10:31 p.m.)

21

22

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2 Wednesday, May 28, 2003:

3 (Jurors resumed deliberations at 9:20 a.m.)

4 (Jury question at 9:30 a.m.)

5 (In-chambers at 10:00 a.m.)

6 THE COURT: You waive presence of
7 the Defendant?

8 MR. INGRAM: The Defendant is not
9 present and we waive the presence of the Defendant.
10 We're here for the purposes of answering a Jury
11 question and it is our collective opinion that her
12 presence is not required, but we do waive it.

13 THE COURT: The question was sent
14 out that will appear on the record as the jurors'
15 question.

16 MR. INGRAM: Let's mark it Court's
17 Exhibit 2.

18 THE COURT: The question was, "Does
19 this mean Donna was actually there while Nate
20 Jackson pulled the trigger?" And another question,
21 "The phrase while the accomplice was committing is
22 in question, (page 19) of instructions?" That was

1 signed by the foreman and then below that is
2 another question. "What constitutes a felony
3 murder?" Again signed by the foreman. The last
4 question is not specifically answered because there
5 was nothing in the instructions concerning felony
6 murder. The answer here given to the Jury reads as
7 follows. "The answer to your question is no. The
8 charges set forth in the indictment and described
9 in your Jury instructions are merely allegations."
10 Second paragraph, "In response to your question as
11 to what constitutes felony murder, I can only
12 direct your attention to the Jury instructions
13 presently in your possession. See instruction to
14 Count Two, pages 17 and 18." The felony murder
15 instruction is no longer called a felony murder,
16 but it is contained in the statute as contained in
17 the instructions. That answer is with agreement of
18 both sides, is that correct?

19 MR. INGRAM: The Defense has an
20 objection.

21 THE COURT: You have your continuing
22 objection?

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1 MR. JUHASZ: Correct.

2 THE COURT: As to the form of the
3 question?

4 MR. JUHASZ: Yes.

5 MR. BECKER: The form of the answer.
6 Their objection is the continuing of the
7 complicitor problem.

8 MR. INGRAM: I take it you will mark
9 the Court's response as Court's Exhibit 2-A.

10 (OFF THE RECORD)

11 MR. INGRAM: Joint Exhibit 1 was
12 admitted by agreement of the parties?

13 MR. BECKER: Yes, just for the
14 record, Joint Exhibit 1 was admitted.

15 THE COURT: Correct.

16 (End of In-chamber discussion)

17 (Jury question and Jury answer at 11:00 a.m.)

18 (In-chambers at 11:10 a.m.)

19 THE COURT: There's a question and
20 an answer. This we have designated as 3 and the
21 answer is 3-A. The question is, "The instruction
22 on page 10 on or about person. We are confused to

1 the words, his/her. On the firearms specification
2 it says Donna Roberts. Please clarify both of
3 these specifications." The answer given to the
4 Jury marked 3-A, "I am unable to offer any further
5 guidance as to the instructions relating to the
6 firearm specifications contained on page 10 of your
7 Jury instructions. If you have a more specific
8 question, please reduce that question to writing
9 and I will try to offer assistance." Signed by
10 myself.

11 MR. INGRAM: No objection from the
12 Defense to your answer.

13 MR. BAILEY: No objection from the
14 State.

15 (End of In-chamber discussion)

16 (Jury question. Jury answer at 12:20 p.m.)

17 (In-chambers at 12:30 p.m.)

18 THE COURT: The question has been
19 sent out from the Jury, which is designated as
20 Court's Exhibit 4, which reads, "On Count 4,
21 firearm charge, (robbery), does the Defendant have
22 to be physically present in the room at the time of

1 discharge to be considered under her control, or
2 could you possibly put above stated in layman
3 terms." Signed by the foreman. Question five
4 submitted is, "Count 3 and Count 4, firearm
5 specification, can the word complicity be put in?
6 And if not why?" Signed by the foreman. After
7 consultation with both the State and the
8 Defendant's counsel, the answer to the Jury on
9 question four. "No, if you find the Defendant is a
10 complicitor, she need not be physically present in
11 the room at the time the firearm is discharged to
12 be considered under her control; however, to find
13 the Defendant guilty of a firearm specification
14 under such circumstances, you must find beyond a
15 reasonable doubt that Donna Roberts had knowledge
16 that Nathaniel Jackson had a firearm in his
17 possession." That is marked as Court's Exhibit
18 4-A. We have chosen not to answer question five
19 because the answer is contained in the instructions
20 if they read it. Agreed?

21 MR. JUHASZ: Agreed.

22 MR. BAILEY: Agreed.

1 (End of In-chamber discussion.)

2 (Verdict at 2:50 p.m.)

3 THE COURT: Ladies and gentlemen,
4 have you arrived at a verdict in this matter?
5 (All nodded affirmatively.)

6 THE COURT: Would the foreperson
7 please deliver that to the Bailiff? The verdict as
8 delivered to me by this Jury reads as follows.
9 "Count One, Complicity to Aggravated Murder, Prior
10 Calculation and Design. We the Jury, having been
11 duly empaneled to well and truly try the above
12 cause and true deliverance make, do find the
13 Defendant, Donna M. Roberts, is guilty beyond a
14 reasonable doubt on Count 1, Complicity to Commit
15 Aggravated Murder, in the manner and form she
16 stands charged in the indictment." That has been
17 signed by all 12 members of the Jury and dated this
18 date.

19 "Count One, Verdict on Specification One.
20 We, the Jury, having been duly empaneled to well
21 and truly try the above cause and true deliverance
22 make, do find the Defendant, Donna M. Roberts, is

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1 guilty beyond a reasonable doubt of complicity in
2 committing the offense of aggravated murder while
3 she was a complicitor in committing or attempting
4 to commit, or in fleeing immediately after
5 committing or attempting to commit aggravated
6 burglary and that the Defendant committed the
7 aggravated murder with prior calculation and design
8 in the manner and form she stands charged in the
9 indictment." Also signed by all 12 members of the
10 Jury, and dated this date.

11 Specification Two to Count One. "We, the
12 Jury, having been duly empaneled to well and truly
13 try the above cause and true deliverance make, do
14 find the Defendant, Donna M. Roberts, is guilty
15 beyond a reasonable doubt of complicity in
16 committing the offense of aggravated murder, while
17 she was an complicitor in committing or attempting
18 to commit, or in fleeing immediately after
19 committing or attempting to commit aggravated
20 robbery and that the Defendant committed the
21 aggravated murder with prior calculation and
22 design, in the manner and form she stands charged

1 in the indictment." That has been signed by all 12
2 members of the Jury with today's date.

3 "Count Two, Complicity to Aggravated
4 Murder. We, the Jury, having been duly empaneled
5 to well and truly try the above cause, and true
6 deliverance make, do find the Defendant, Donna M.
7 Roberts, is guilty beyond a reasonable doubt on
8 Count Two, Complicity to Commit Aggravated Murder,
9 in the manner and form she stands charged in the
10 indictment." That is signed by all 12 members of
11 the Jury, with this date.

12 Specification One to Count Two. "We the
13 Jury, having been duly empaneled to well and truly
14 try the above case and true deliverance make, do
15 find the Defendant, Donna M. Roberts, is guilty
16 beyond a reasonable doubt of complicity in
17 committing the offense of aggravated murder while
18 she was a complicitor in committing or attempting
19 to commit, or in fleeing immediately after
20 committing or attempting to commit aggravated
21 burglary, and that the Defendant committed the
22 aggravated murder with prior calculation and design

1 in the manner and form she stands charged in the
2 indictment." That is signed by all 12 members of
3 the Jury and dated today.

4 On Specification Two to Count Two. "We
5 the Jury, having been duly empaneled to well and
6 truly try the above cause and true deliverance
7 make, do find the Defendant, Donna M. Roberts, is
8 guilty beyond a reasonable doubt of complicity in
9 committing the offense of aggravated murder while
10 she was a complicitor in committing or attempting
11 to commit or in fleeing immediately after
12 committing or attempting to commit aggravated
13 robbery and that the Defendant committed the
14 aggravated murder with prior calculation and design
15 in the manner and form she stands charged in the
16 indictment." Signed by all 12 members of the Jury
17 and dated today.

18 On Count Three, Complicity to Aggravated
19 Burglary. "We, the Jury, having been duly
20 empaneled to well and truly try the above cause and
21 true deliverance make, do find the Defendant, Donna
22 M. Roberts, is guilty beyond a reasonable doubt on

1 Count Three, Complicity to Commit Aggravated
2 Burglary, in the manner and form she stands charged
3 in the indictment." Signed by all 12 members of
4 the Jury and dated today.

5 On Count Three, the Firearms
6 Specification. "We, the Jury, having been duly
7 empaneled to well and truly try the above cause and
8 true deliverance make, do find by proof beyond a
9 reasonable doubt that the Defendant, Donna M.
10 Roberts did have a firearm on or about her person
11 or under her control while committing aggravated
12 burglary in the manner and form she stands charged
13 in the indictment." Signed again by all 12 members
14 of the Jury and dated today.

15 Count Four, Complicity to Aggravated
16 Robbery. "We, the Jury, having been duly empaneled
17 to well and truly try the above cause and true
18 deliverance make, do find the Defendant, Donna M.
19 Roberts, is guilty beyond a reasonable doubt on
20 Count Four, Complicity to Commit Aggravated
21 Robbery, in the manner and form she stands charged
22 in the indictment." Signed by all 12 members of

1 the Jury, and dated this date.

2 The Firearm Specification to Count Four,
3 "We, the Jury, having been duly empaneled to well
4 and truly try the above cause and true deliverance
5 make, do find by proof beyond a reasonable doubt
6 that the Defendant, Donna M. Roberts, did have a
7 firearm on or about her person or under her control
8 while committing aggravated robbery in the manner
9 and form she stands charged in the indictment."
10 Signed again by all 12 members of the Jury, with
11 this date.

12 Ladies and gentlemen, have I properly
13 read the verdict rendered by you?

14 (All nodded affirmatively.)

15 THE COURT: Does the State wish to
16 poll the Jury?

17 MR. BAILEY: No, Your Honor.

18 THE COURT: Does the Defense?

19 MR. INGRAM: Respectfully, yes, Your
20 Honor.

21 THE COURT: Thank you. Because of
22 your finding that means that this case -- I

1 apologize. I'll refer to you then by name -- by
2 number. You merely answer yes or no. Ladies and
3 gentlemen, Juror No. one, have I properly read the
4 Verdict rendered by you?

5 JUROR NO. 1: Yes.

6 THE COURT: Number two?

7 JUROR NO. 2: Yes.

8 THE COURT: Number three?

9 JUROR NO. 3: Yes.

10 THE COURT: Number four?

11 JUROR NO. 4: Yes.

12 THE COURT: Number five?

13 JUROR NO. 5: Yes.

14 THE COURT: Number six?

15 JUROR NO. 6: Yes.

16 THE COURT: Number seven?

17 JUROR NO. 7: Yes.

18 THE COURT: Number eight?

19 JUROR NO. 8: Yes.

20 THE COURT: Number nine?

21 JUROR NO. 9: Yes.

22 THE COURT: Number 10?

1 JUROR NO. 10: Yes.

2 THE COURT: Number 11?

3 JUROR NO. 11: Yes.

4 THE COURT: Number 12?

5 JUROR NO. 12: Yes.

6 THE COURT: Thank you. Because of
7 the verdict that you have rendered, this case will
8 go into a second phase. I have had a conference
9 with the Attorneys, trying to anticipate all
10 possible results here. I would ask you all to be
11 back here next Wednesday at 9:00 in the morning.

12 Now, our experience is from prior cases
13 that the three days, Wednesday, Thursday and
14 Friday, should be sufficient time. Of course, that
15 depends on how long it takes you on your verdict,
16 but we'll expect that on Wednesday, most of the
17 proceeding will be put before you. It might go
18 into Thursday, but your time will be up to you
19 after the matter of course, is presented to you.

20 I'm going to direct that you not return
21 to work. This is a very important part of this
22 case, as the entire case is. From past experience,

1 we have had situations where we had a week or
2 longer and it is difficult to keep people from
3 going to work, but I can tell you what will happen
4 if you do if you were to go back to work, and that
5 is that everybody in the world you work with is
6 going to pester you to death and you don't need
7 that, and I think that would not be fair to either
8 side here. You have only half completed your job
9 at this point. You have to make one further
10 determination. If you are not exposed to
11 everything that we have tried to keep you from
12 being exposed to, that is going to be better for
13 the system.

14 So, we were reviewing each of your
15 situations, and it was my recollection that only
16 potentially two of you had any real problem with
17 your employment, and I hope we have covered that.
18 So the rest of you, I would direct that you not
19 return to work until we complete this entire case.
20 We thank you for your time and your patience and
21 your diligence. See you back here at 9:00 next
22 Wednesday.

1 (SIDE BAR DISCUSSION, OFF THE RECORD AND
2 OUT OF HEARING)

3 THE COURT: They have reminded me of
4 one thing. You should bring your overnight bags
5 again Wednesday. I started to say to the ladies
6 serving as alternates here, you should be back,
7 also. I would again remind all of you as I have
8 done throughout this trial, you are not to watch
9 anything on T.V., you are not to read any
10 newspapers. You are not to permit anyone to
11 discuss the case with you or in your presence. You
12 are to keep your own counsel. We have had no
13 problem that I'm aware of with this Jury, and that
14 seems to be as time goes on more difficult to keep
15 jurors into the framework of what you have to do,
16 and that is to isolate yourself from any media or
17 any contact with anybody about the case. I thank
18 you for that. So, until Wednesday, please remember
19 the admonition and follow it as closely absolutely
20 as you can. And you will get this case through, so
21 we have all done our job in a proper manner.

22 I thank you, you are excused. I'm going

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1 to ask everybody in the Courtroom to remain until
2 the jurors have left down to the second floor.

3 Thank you very much.

4 (Court in Recess at 3:00 p.m.)

5 MR. INGRAM: I believe that there
6 are motions that you now have to rule on that were
7 previously filed and held in abeyance.

8 THE COURT: There are several.

9 MR. INGRAM: I'm not telling you
10 what those are, but we'll certainly draw your
11 attention to those motions.

12 THE COURT: Let's pick a time for
13 Monday, Tuesday. You all agree on that, and let me
14 know. The rest of you folks that have joined us
15 this afternoon, you are free to leave and we thank
16 you for your patience.

17 (Court adjourned.)

18

19

20

21 Tuesday, June 3, 2003; In-chambers at 11:50 a.m.:

22 THE COURT: All parties, attorneys

1 and Miss Roberts are present. Dr. Thomas Eberle is
2 also present. There's been a request made by the
3 Defense that this hearing be held in-camera and the
4 Court has no objection to that. I assume the State
5 does not.

6 MR. BAILEY: We have no objection.

7 THE COURT: Donna, you have been
8 found guilty by the Jury of the charges that were
9 filed against you and you are entitled, the law
10 requires that this second phase be gone through,
11 and I'm sure that you are aware by this time as to
12 the function of the mitigation phase. I'll state
13 to you that my opinion is that your attorneys have,
14 and this is just my opinion, done an excellent job
15 up to this point. Saving their ammunition, so to
16 speak for this phase of the trial. The facts of
17 this case as you were aware from the beginning are
18 pretty foreboding as to the evidence that the State
19 had available. And at the mitigation phase, your
20 attorneys would have an opportunity to put before
21 the Jury things in your favor, whereby this Jury
22 would determine that there would be no purpose or

1 reason in a larger sense to impose the death
2 penalty upon you. I am informed by them that you
3 have instructed them that you do not wish to
4 present any evidence.

5 THE DEFENDANT: That is correct.

6 MR. INGRAM: Save and except an
7 unsworn statement.

8 THE COURT: Okay. You have the
9 right to do that, if you do so voluntarily and
10 knowingly. I have to say that I think that it is
11 unusual. Most people would take advantage of that
12 situation because it allows the Jury an opportunity
13 to know something about Donna Roberts that was not
14 brought out during the trial.

15 THE DEFENDANT: May I interrupt? If
16 we let them know the real me, they will think they
17 are in the wrong place, so let's not get them more
18 mixed up than they are.

19 THE COURT: That is the whole
20 purpose for the mitigation phase.

21 THE DEFENDANT: I know.

22 THE COURT: Because many things

1 cannot be brought out during the course of the
2 trial because of the rules of evidence and that.

3 THE DEFENDANT: I'm aware.

4 THE COURT: Your attorneys will miss
5 an opportunity to be able to present evidence that
6 goes behind what they already know to make you into
7 a real person, rather than the person that they
8 have heard about. I have no idea what that
9 evidence would be. Your attorneys would be quite
10 capable, I'm sure, of presenting such evidence.
11 The whole purpose of that is for the Jury to take
12 the person that they know from what they have heard
13 already, and be faced with comparing that person
14 with the person your attorneys could present by the
15 background and whatever. By ordering your
16 attorneys not to do that, then this Jury knows you
17 by what they have already heard.

18 THE DEFENDANT: That is what I am
19 hoping for.

20 THE COURT: You understand that?

21 THE DEFENDANT: I do.

22 THE COURT: You have thought this

1 through?

2 THE DEFENDANT: Very much so.

3 THE COURT: You have talked with
4 your attorneys about what you are doing?

5 THE DEFENDANT: I talked to them, my
6 parents, my son, my sister, people in five states
7 that love me, a couple of countries, and yes, I
8 know what I am doing. I explained to everyone that
9 cares why I am doing it.

10 MR. INGRAM: May I at this time
11 interject something for the record or would you
12 prefer I wait?

13 THE COURT: Go ahead.

14 MR. INGRAM: The conversations
15 between Donna on the one hand and Mr. Juhasz and I
16 on the other hand relating to the presentation of
17 mitigating evidence during the sentencing phase of
18 these proceedings occurred over at least a five day
19 time span. We have explained to Donna the exact
20 nature of the mitigating evidence that we propose
21 to introduce. We have obtained hospital records
22 relating to a six day psychiatric stay in the year

1 2000. There was a hospitalization in April of --
2 two hospitalizations of April of 1999 relating to a
3 traffic accident. We have obtained counseling
4 records from Valley Counseling. We made
5 arrangements for basically family members to come
6 and testify during the sentencing phase. Those
7 witnesses were canceled. Donna has instructed us
8 not to present mitigating evidence. And while I
9 professionally and personally may disagree with
10 that decision, I'll state on the record that it is
11 my personal and professional opinion that Donna's
12 decision making process was rational and that she's
13 competent to make the decision. I believe
14 Mr. Juhasz should explain his own feelings on that
15 matter, but those are my opinions. My own
16 perspective is that this is a rational, competent
17 decision on her part. It is not one that I would
18 make, it is not one that I professionally approve
19 of, but it is her decision, not mine.

20 THE COURT: Right. Mr. Juhasz?

21 MR. JUHASZ: Briefly. I echo
22 everything Mr. Ingram said. I suppose I would say

1 in addition it is obviously difficult as a lawyer,
2 because what is being proposed here runs contrary
3 to our training, particularly our training for
4 certification for capital cases and it runs contra
5 to my experience in other capital cases in which I
6 have been involved, but this Court and all of the
7 lawyers in this room are fairly well acquainted
8 with me and I'm probably not making too much of an
9 exaggeration to say that nobody complains about
10 what I regard as an over exercise of governmental
11 power more than I do. And that said, there is, I
12 guess, a certain amount of big brother in what we
13 do in these mitigation phases because we in essence
14 tell a Defendant that this is what they have to do.

15 My reading of the case law, however, is
16 actually fairly consistent with my own view of what
17 the Constitution requires and that is if a person
18 has a liberty under the United States or Ohio
19 Constitutions and they knowingly and voluntarily
20 and intelligently decide to forego or give up that
21 liberty, then that is something that all of us are
22 duty bound to honor. She has that type of liberty

1 under the Eighth Amendment of the United States
2 Constitution and Article One, Section IX of the
3 Ohio Constitution and having met with Donna, and
4 Mr. Ingram and conferred with Dr. Eberle, I am
5 comfortable that what Donna is doing is in indeed,
6 knowing and voluntary and intelligent.

7 MR. INGRAM: Dr. Eberle is with us.
8 I do think it would be appropriate for the Court to
9 inquire of him.

10 THE COURT: I would like to make one
11 observation. I had an opportunity to see Miss
12 Roberts during the entire trial and I notice, or I
13 perceive a totally different person today as far as
14 being, appearing to be less emotional, less up
15 tight, for want of better words, and a more relaxed
16 person.

17 THE DEFENDANT: Every CO said that
18 since I went back there Wednesday. Every
19 correction officer said that.

20 THE COURT: Dr. Eberle.

21 DR. THOMAS EBERLE
22 being duly sworn according to law, on his oath,

1 testified as follows:

2 THE COURT: If I may inquire.

3 MR. JUHASZ: Absolutely.

4 EXAMINATION BY THE COURT OF DR. EBERLE:

5 Q. How long have you -- how long has it been
6 since you first met Miss Roberts?

7 A. My first contact with Miss Roberts was toward
8 the end of March, 2003.

9 Q. You had a period of time then to speak with
10 her to know things concerning her?

11 A. Yes.

12 Q. And will you agree that she was of a different
13 attitude and mental state when you first
14 saw her than from what she is now?

15 A. Yes, I would agree.

16 Q. You have had an opportunity today and recently
17 to speak with her?

18 A. Yes, I spent a couple of hours with her this
19 morning.

20 Q. I assume that you did various testing and
21 whatever?

22 A. I evaluated her, yes. We didn't do any formal

1 psychological testing.

2 Q. Based on that personal contact and testing and
3 with your -- I should ask this question.
4 There's no objection by the State that
5 Dr. Eberle is qualified?

6 MR. BECKER: He may want to state
7 his name, who he is and what his experience is. I
8 don't have an objection. I think he's qualified.

9 A. Thomas Eberle. I have a Ph.D. in clinical
10 psychology which I received from the
11 University of Pittsburgh in 1974 and
12 board certified in forensic psychology by
13 the American Board of Professional
14 Psychology since 1980, licensed to
15 practice in Pennsylvania where I reside.
16 I have been practicing in this area,
17 forensic psychology before I was board
18 certified, probably for about 25 years
19 and full time private practice primarily
20 in and around the Pittsburgh area. On
21 the staff of a number of VA Hospitals,
22 West Penn Hospital. University of

1 Pittsburgh Medical Center.

2 MR. BECKER: You have been qualified
3 as an expert in the State of Ohio?

4 A. I have testified in Ohio before and in fact in
5 this County.

6 THE COURT: The Court will accept
7 the doctor's testimony as an expert witness in the
8 field of psychology. Hearing no objections, I'll
9 proceed.

10 Q. Doctor, based on your training, your
11 opportunity to discuss this matter fully
12 with Miss Roberts and from your personal
13 observations, do you have a professional
14 opinion beyond a reasonable degree of
15 medical certainty concerning her
16 competency?

17 A. I do. Donna and I discussed this extensively
18 today, rather than previously because
19 when I had seen her before, it was prior
20 to the trial. And it is my opinion,
21 based on my training and experience and
22 my contact with Donna that she's now

1 mentally and rationally making this
2 decision for reasons that are not
3 unintelligent. And again, I would echo
4 what Mr. Ingram said. It is not
5 necessarily what I would personally do,
6 but it is really her right to make that
7 decision, and I find no psychiatric or
8 psychological abnormality that would
9 prevent her from having the faculties
10 needed to make that decision in a
11 rational way.

12 Q. Based upon your conversations with her,
13 without getting into what those are and
14 your entire knowledge of this situation,
15 you feel that it is a rational decision
16 on her part?

17 A. Yes, I do.

18 Q. You have discussed that fully with her?

19 A. Specifically and fully, yes, Your Honor.

20 THE COURT: I would allow either
21 side an opportunity, if you have any further
22 questions of the doctor.

1 MR. INGRAM: I have nothing further
2 from the Defense.

3 MR. BECKER: I think the Court has
4 complied with the dictates of State vs. Ashworth.
5 Other than the fact that the Court wants to
6 address --

7 THE COURT: Donna, you have heard
8 what these other folks have had to say. I think
9 both your attorneys and the doctor here have
10 expressed something to the effect that they don't
11 know that they necessarily agree with your
12 decision. They accept the fact, as Mr. Juhasz put
13 it, but you of course have the right to take the
14 approach that you are, but I must be entirely
15 convinced that this is your wish, and that you
16 understand all aspects of it, that you understand
17 that by waiving the presentation of mitigating
18 evidence, this Jury has little to go upon in coming
19 up with something other than the death penalty.

20 THE DEFENDANT: That is what I hope
21 for.

22 THE COURT: Do you have any other

1 questions about what you are doing or any questions
2 about anything that I or these other folks may
3 answer for you?

4 THE DEFENDANT: No, Sir. I know
5 what I am doing and I know why. Thank you for
6 asking.

7 THE COURT: Gentlemen, do you have
8 anything further?

9 MR. JUHASZ: Yes, Sir. Donna, do
10 you understand that this decision once made is what
11 lawyers call irrevocable? You can't take it back.
12 You can't later --

13 THE DEFENDANT: Yes, John.

14 THE COURT: That is a good point,
15 because Miss Roberts, in this one case that they
16 are referring to, this Ashworth case, that is one
17 of the basis that it was appealed upon, was that
18 the Defendant at a later time, after all of the
19 smoke had cleared, came to the decision that, "I
20 made a big mistake in waiving that mitigation," and
21 tried to get the Court to allow him a second
22 chance. And there's no second chance. This is

1 irrevocable as he says. You have any hesitation at
2 all? Do you need more time?

3 THE DEFENDANT: Absolutely not.

4 THE COURT: The Court is satisfied
5 from the conversation that has occurred this
6 morning, from observing Miss Roberts in speaking
7 with her, that this is her voluntary decision. She
8 appears to have no reluctance at all in making the
9 decision. The Court will note that she appears to
10 me to be relieved in having made the decision. I
11 do not understand why that is, nor is it necessary
12 that I do. She's expressed several times that she
13 has come to some resolution in her own mind, that
14 this is what she wants to do. And I guess again as
15 Mr. Juhasz says, it is not my function here to
16 impose what I would do or what I would think is
17 proper, that is strictly Miss Roberts say on the
18 matter and she's had her say. Do you wish to stick
19 by that, is that correct?

20 THE DEFENDANT: Yes, Sir.

21 THE COURT: Fair enough.

22 MR. INGRAM: I take it from what you

1 have just stated for the record, that you also find
2 that Donna's decision is a rational and competent
3 decision.

4 MR. BECKER: Ashworth speaks of
5 freely and knowingly and voluntarily and
6 intelligently.

7 THE COURT: Freely, knowingly and
8 voluntarily, intelligently. It is done in a
9 rational basis, which is predicated on the
10 testimony of the doctor that she's competent to
11 make that decision.

12 THE DEFENDANT: Just as long as I
13 get to make a statement tomorrow. I do get to make
14 a statement tomorrow?

15 THE COURT: Yes, you surely do if
16 you wish to do so, yes.

17 MR. JUHASZ: I have one other thing
18 if it please the Court, and that is that we also
19 had a conference with Donna this morning. The
20 Defense filed several motions this morning which we
21 had discussed with the Prosecutor yesterday and
22 faxed to them late in the day. And with the

1 exception of one, Donna has instructed us to
2 withdraw those. We filed a motion to prohibit
3 reference to the nature and circumstances of the
4 offenses at certain times, because the Supreme
5 Court, after a long time has finally figured out
6 that that is indeed a mitigating circumstance and
7 not to be discussed unless raised by the Defense.
8 I don't know whether Donna intends to raise it or
9 not in her own unsworn statement, but she has
10 instructed us to withdraw that motion.

11 MR. BECKER: Even speaking to that,
12 even if she does mention it in her unsworn
13 statement, we're prohibited from commenting on it
14 anyway. The only thing we can say about the
15 unsworn statement is that it is an unsworn
16 statement. Not subject to cross examination. That
17 is the gist of what we can say about the unsworn
18 statement.

19 MR. JUHASZ: Without that there, had
20 she not raised it in mitigation, had we gone
21 forward with mitigation, the Prosecutor would not
22 be allowed to argue about it in final argument.

1 MR. BECKER: I agree.

2 MR. JUHASZ: That is also being
3 withdrawn. We filed a motion to prohibit
4 readmission of certain Exhibits from the first
5 phase. Basically, in a nutshell the argument was
6 that the only Exhibits that should be admitted in
7 the second phase would be those pertinent to the
8 aggravating circumstance. She has instructed us to
9 withdraw that motion and to not object to the
10 admission of any Exhibits into the second phase, is
11 that right?

12 THE DEFENDANT: Yes.

13 MR. JUHASZ: And also we filed a
14 motion to merge the capital specifications under
15 2929.04 (A)(7) because they were in essence for
16 sentencing purposes, duplicative. At least that
17 was the Defense argument and she has instructed us
18 to withdraw that motion as well, correct?

19 THE DEFENDANT: Yes.

20 THE COURT: That last is by virtue
21 of law.

22 MR. JUHASZ: Yes, Sir. The only

1 other one that we did file this morning that she
2 did not instruct us to withdraw is the motion to --
3 Defendant's motion to prohibit improper comment by
4 the Prosecutor on the Defendant's unsworn
5 statement, and --

6 THE COURT: That motion will be
7 granted.

8 MR. JUHASZ: That one she has
9 instructed us not to withdraw.

10 MR. BECKER: For the record, we do
11 want to dismiss, I believe it is Count Two.

12 MR. BAILEY: We want to retain the
13 prior calculation and design, Aggravated Murder,
14 Count One, and dismiss the second count of
15 aggravated murder, which is the felony murder.

16 THE COURT: That motion will be
17 granted.

18 MR. BAILEY: Then when we move to
19 admit all of the relevant evidence, the evidence
20 that is relevant to the second phase from the first
21 phase, as to the testimony and evidence, we're not
22 offering everything, are we? No, we'll cut that

1 down.

2 THE COURT: Donna, it is your wish
3 to withdraw the motions as specified?

4 THE DEFENDANT: Yes, Sir.

5 THE COURT: Those motions are
6 withdrawn.

7 THE DEFENDANT: There's one other
8 thing. I am wearing regular underwear today.

9 (End of In-chamber discussion at 12:20 p.m.)

10

11

12

13 Wednesday, June 4, 2003; In-chamber at 9:30 a.m.:

14 THE COURT: We're assembled. Do you
15 waive presence of the Defendant?

16 MR. INGRAM: We do.

17 MR. JUHASZ: So the record is
18 completely clear about that, we're in-chambers for
19 the purposes of discussing Jury instructions. Miss
20 Roberts and I have had a conversation wherein I
21 advised her that I see a distinct difference
22 between a waiver of mitigation and counsel's

1 obligation to see to it that the Jury is properly
2 instructed on the applicable law relating to the
3 facts and evidence put before the Jury. All of
4 that having been said, we have a bit of a
5 disagreement about that, but her presence is
6 waived.

7 THE COURT: Because she does not
8 care to participate?

9 MR. JUHASZ: Yes, Sir.

10 THE COURT: Okay. You have had an
11 opportunity to review this charge.

12 MR. JUHASZ: Yes, Sir. Mr. Becker
13 was kind enough to fax this to us yesterday
14 afternoon. Mr. Ingram and I have gone over it. Do
15 you want me to start in and tell you the
16 difficulties?

17 THE COURT: Yes.

18 MR. JUHASZ: Some of these are minor
19 changes, but they are, I think, necessary to comply
20 with what we believe is going to transpire. On the
21 first full paragraph of page two where it says, "In
22 this phase of the proceedings, the Defense has," we

1 just propose to change that to, "The Defendant has
2 presented an unsworn statement." Leave out the
3 rest of that sentence.

4 MR. BECKER: The first paragraph is
5 going to read, "In this phase of the proceedings,
6 the Defendant has presented an unsworn statement."
7 (OFF THE RECORD)

8 THE COURT: For the record, we have
9 gone over the charge. They have been retyped.
10 There are some objections, however, I believe from
11 the Defense.

12 MR. JUHASZ: If it please the Court,
13 the Court has in its possession now a set of Jury
14 instructions which contain the changes upon which
15 the parties have agreed. The Defendant, however,
16 still has the following objections. Several places
17 throughout the instructions, the word "recommend"
18 is used. We believe that that is and there was a
19 pre-trial motion on this and argument on this
20 before, however nonetheless, we object to the use
21 of the word "recommend" anyplace in the penalty
22 phase instructions. We believe that violates the

1 Eighth Amendment and Caldwell against Mississippi.
2 The second instruction we have has to do with
3 the -- I'm sorry, the second objection has to do
4 with the instructions concerning the specifications
5 themselves. I think the record is fairly complete
6 as to what our objections are as to the language in
7 the specifications submitted to the trial jurors at
8 the end of the first phase, because the proposed
9 instructions, basically regurgitate that language
10 as far as providing the Jury the aggravating
11 circumstances in the second phase, we object to
12 that.

13 MR. BECKER: The Defendant has
14 requested on page six that the third mitigating
15 factor that they are to consider would be that --
16 now this strictly out of the statute, although I
17 changed the pronoun. "The offender was a
18 participant in the offense but not the principal
19 offender, the degree of her participation in the
20 offense and the degree of the offender's
21 participation in the acts that led to the death of
22 the victim." That is verbatim from 2929.04 (B)(6).

1 MR. JUHASZ: That is the record.
2 The record should reflect that is an instruction
3 that was added at the request of the Defendant.
4 The basis for that is even if Miss Roberts does not
5 bring that up in, what we anticipate to be her
6 unsworn statement presented here in the mitigation
7 phase, the trial Jury is allowed to consider
8 Exhibits and testimony from the first phase as they
9 are relevant to both the aggravating circumstances
10 and the mitigating factors, and it seems to us that
11 that is an appropriate mitigating factor based upon
12 the evidence presented at the first phase.

13 MR. BECKER: There was an additional
14 request by the Defense that the language indicating
15 that her unsworn statement was not evidence be
16 removed. So that language has been removed simply
17 stating that it now says, "The Defendant gave an
18 unsworn statement in this matter and therefore
19 cross examination was not permitted. It is her
20 right under Ohio law to do so, and this statement
21 may be considered by you for whatever purpose you
22 may assign." The language in there that was not

1 evidence has been taken out.

2 THE COURT: Okay.

3 (OFF THE RECORD)

4 MR. BAILEY: The Defendant -- do you
5 want to address the question about the Defendant
6 wearing jail clothes?

7 MR. INGRAM: The Defendant is
8 presently attired in blue coveralls. She's attired
9 in blue coveralls as a result of her free and
10 voluntary choice. She was given an opportunity to
11 change into civilian clothes. Captain Bacon
12 actually encouraged and recommended that she change
13 into civilian clothes. She declined that
14 opportunity, and she's wearing the coveralls
15 because she chooses to wear the coveralls.
16 Personally, I don't fault that decision.

17 MR. BECKER: We're going to move for
18 the admission of some State's Exhibits in relevance
19 to this phase. Specifically, number 266, the
20 bullet from the brain. 257, the bullet removed
21 from the clothing. 259, the bullet removed from
22 the wall. Photographs 191, 184, 182, 181, 178,

1 174, 172, all of those are of the silver Chrysler
2 300-M. State's Exhibits 7, 13, 27 and 57 which are
3 photographs of Mr. Fingerhut. State's Exhibit 360
4 which is the log from the Lorain Correctional
5 Center. State's Exhibits 362-A through and
6 including 381-A, those are the transcripts of the
7 telephone calls between Miss Roberts and
8 Mr. Jackson. 322, which is the certified phone
9 records of the phone calls before the homicide.
10 The actual taped conversations which are State's
11 Exhibits 360 is the CD and then 361 through 381
12 which are the audio tapes and then finally all of
13 the letters which are State's Exhibits 273, 271,
14 and then there's also a 275-A and 275-B, which are
15 also letters that were found. It is all of the
16 letters, all of the phone calls and that would be
17 what we're going to move for admission for in this
18 phase.

19 MR. BAILEY: I have to do that on
20 the record then, don't I, when we start out? I'll
21 just move for admission.

22 MR. INGRAM: We object to the CD.

1 MR. BECKER: The only reason I would
2 ask for the CD to be thrown in there in the event
3 the tapes would break. If they want to, we can get
4 them a computer to play the CD on. These tapes
5 have been listened to by the Jury.

6 THE COURT: What is your objection
7 based on?

8 MR. INGRAM: You are introducing,
9 the State is introducing the same evidence in three
10 different formats. One is a CD rom. I think that
11 is actually an edited CD Rom. The other is the
12 original tapes themselves, and then the
13 transcripts. I think it is unfair for them to
14 introduce the same evidence in three separate
15 mediums.

16 THE COURT: I think it is the same
17 evidence, but you are saying that this isn't the
18 same evidence because it has been edited?

19 MR. INGRAM: The CD, I believe, is
20 edited.

21 THE COURT: From the tapes?

22 MR. INGRAM: From the tapes. They

1 have introduced the tapes.

2 THE COURT: The tapes are the best
3 evidence, I'll agree with that. If something would
4 happen, which is very unlikely that the tapes would
5 not be usable by then, then I can always introduce
6 it.

7 MR. INGRAM: We can always make new
8 copies of the tapes. They have a tape player back
9 there. They do not have a computer to play the CD.

10 THE COURT: Do you have the tapes as
11 part of your submission?

12 MR. BAILEY: Yes.

13 THE COURT: That is good enough.
14 State's Exhibit 361 will be kept out.

15 (End of In-chamber discussion)

16 (In Open Court with Jury present at 10:30 a.m.)

17 THE COURT: Good morning to the
18 Jury. Ladies and gentlemen, we're now ready to
19 proceed with the second phase of this trial. You
20 will be required to make a decision on the sentence
21 that you are to recommend to this Court. Before we
22 proceed, I am required to ask all of you, have you

1 been subjected to any information about this trial
2 during the past several days since you returned
3 your verdict in regard to anything about the trial
4 of any nature, be that through the media, the
5 newspapers, T.V.? Has anyone approached you and
6 talked with you about the trial where you were
7 unable to avoid them?

8 (All nodded negatively.)

9 THE COURT: Have all of you been
10 able to follow the admonition given previously to
11 the letter? I see you all shaking your heads yes.
12 Are there any of you that are unable to proceed
13 with this second phase? I see no signs to the
14 contrary.

15 Now the Defendant is given an opportunity
16 to present evidence in mitigation of the imposition
17 of the sentence of death. Mitigating factors are
18 factors that while they do not justify or excuse a
19 crime, nevertheless, may be considered by you, the
20 Jury, in fairness and mercy, as extenuating or
21 reducing the degree of the Defendant's punishment.
22 The Defendant has a right to proceed first, with an

1 opening statement and the presentation of evidence.
2 The State of Ohio may offer evidence in rebuttal of
3 any mitigating evidence presented by the Defendant,
4 though you have already found the Defendant, Donna
5 Roberts guilty of the aggravating circumstances in
6 this matter.

7 But at the first phase of the trial, you
8 decided that the Defendant was guilty of two counts
9 of aggravated murder, as well as two specifications
10 of aggravating circumstances that were attached to
11 the first count and two specifications that were
12 attached to the second count. Because the acts for
13 which the Defendant stands convicted as to Counts
14 One and Two constitute only one event, she can only
15 be punished for one offense of Aggravated Murder of
16 the person of Robert S. Fingerhut. As a result,
17 the State of Ohio has elected to dismiss the second
18 count of the indictment at this second phase of the
19 trial.

20 This means that the Defendant stands
21 convicted for penalty purposes of Count One of the
22 indictment together with the two specifications

1 attached to Count One. Now the State of Ohio bears
2 the burden of proving to you that these aggravating
3 circumstances outweigh any mitigating factors which
4 may be presented to you in this hearing before you
5 can return a sentence recommending death beyond a
6 reasonable doubt.

7 At the conclusion of the evidence, the
8 State of Ohio will have the opportunity to open and
9 close the final arguments, that is, of course,
10 because they bear the burden of proof. Thereafter,
11 I'll be called upon to give you instructions of law
12 further defining your duties in regard to the
13 burden of proof and how you are to indicate your
14 decision to us.

15 You will remain under the admonition I
16 gave you at the very outset of this case. You may
17 not form or express any opinion concerning this
18 case until all of the evidence and arguments are
19 presented to you and you are back in the Jury room.
20 You may not have any contact with the parties,
21 witnesses or lawyers for any reason, or in any way
22 attempt to investigate the subject matter of this

1 case on your own. You may not discuss this case
2 among yourselves or with anyone else or let anyone
3 discuss it with you or in your presence until I
4 tell you, you may do so. You may not read about
5 this case in the newspaper, listen to it on the
6 radio or television, or let anyone read to you or
7 comment to you about it.

8 Now the function of the alternate jurors
9 remains the same. You should pay close attention
10 to the evidence, the arguments of counsel, and
11 instructions of law, in case you are called upon to
12 replace one of the 12 jurors before they start
13 their deliberations. Once you have begun your
14 deliberations, you will be sequestered. This means
15 that if your deliberations go into an evening this
16 week, you will be sequestered together overnight.
17 Are counsel ready to proceed with the second phase
18 of this trial?

19 MR. BAILEY: Yes.

20 MR. INGRAM: Yes.

21 MR. BAILEY: The State moves to
22 introduce any and all evidence raised at trial that

1 is relevant to the aggravating circumstances the
2 offender was found guilty of committing.

3 THE COURT: For the record, we have
4 gone over in-camera and placed on the record those
5 specific Exhibits which the State is going, which
6 the State has proffered and the Court has accepted
7 as evidence for the purpose of the second phase.
8 The Defense has made objections and the Court has
9 ruled on those objections on the record. Is that
10 agreed?

11 MR. INGRAM: That is agreed on the
12 Exhibits.

13 MR. BAILEY: Yes, Your Honor.

14 THE COURT: You may proceed.

15 MR. INGRAM: Pursuant to Donna's
16 instructions, the Defense will waive opening
17 statement.

18 THE COURT: Thank you.
19 Mr. Prosecutor, I should ask further, does the
20 State have any opening statement you wish to make?

21 MR. BAILEY: We're going to waive
22 our opening statement.

1 THE COURT: Does the Defense have
2 anything that you wish to present at this time?

3 MR. INGRAM: Donna would like to
4 make an unsworn statement from the podium if she
5 may.

6 THE COURT: Very well.

7 THE DEFENDANT: Hi. I wear my jail
8 clothes that I have been wearing for a year and a
9 half. I didn't think I had to dress today. How
10 many wrong turns does a person have to make to get
11 to where I am today? Just one.

12 THE COURT: Is the Jury able to hear
13 the Defendant?

14 JUROR: No.

15 THE COURT: You are welcome to take
16 the stand here.

17 THE DEFENDANT: We're not presenting
18 any mitigating circumstances today, which means
19 there are no doctors testifying, my family is not
20 testifying. Even though my son is nice enough to
21 come for today. We're not getting any kind of
22 evidence, nothing. We're giving you no mitigating

1 circumstances whatsoever.

2 The reason I'm up here is because I have
3 to get things out of me that have been in me for a
4 year and a half. It is not going to make any
5 difference. It cannot make any difference in your
6 decision today. You made your decision that I'm
7 guilty. The aggravating circumstances, mitigating.
8 There are none. You don't have much of a choice.
9 I'm going to read this. Well, like I said, we're
10 not calling anyone else, so I'm going to take 45 or
11 50 minutes, but I'll try to go fast. Try to keep
12 up.

13 Some good has to come out of this
14 nightmare and I know that Robert would have wanted
15 that to be like that. I'm not taking an oath today
16 because when you take an oath it is a very serious
17 thing according to my religion, which you know what
18 that is now because the Prosecutor told you. If
19 you take an oath and say one wrong word, one in 50
20 pages, you have taken God's name in vain, and I'll
21 not take the chance of doing that like many of
22 these witnesses did. It is a sin. I have

1 committed other sins, but that is not one of them.

2 Now I'm not standing here to beg you to
3 spare my life. That is not my intention. If it
4 was I would have allowed everybody to speak like I
5 told you. I refused. I refused to let them make
6 any kind of statements. What I'll say is in no way
7 to be conceived as mitigating like I told you. I
8 offer none. There are two reasons that I want to
9 speak; one is to expose people who have taken an
10 oath to God to tell the truth, the whole truth, and
11 then sat in that witness box and lied and cheated,
12 abused authority, used their power to destroy
13 lives, and do so in the most serious place in the
14 most serious of circumstances, a Courtroom and a
15 murder trial, with a possible death penalty, times
16 two.

17 This is the second one. The second
18 reason is to demand racial equality in a Courtroom.
19 All men are created equal -- don't laugh. It's
20 funny, isn't it? We say that. Who means it?
21 Nobody. Unless your skin is black, you grew up on
22 the streets because you had no other choice, you

1 are not equal. Because you are poor and you must
2 place your life in the hands of incompetent Public
3 Defenders, you are not equal. What does our
4 Government do, our State do, our community do, or
5 one of you do to help insure proper education,
6 housing, or a safe environment for our less
7 fortunate, helpless children who never have a
8 chance from the moment they are born get a chance?
9 How many of you can say you have done anything?

10 Well, I have taken action or lack of it
11 today to make certain that this little old white
12 lady you have been hearing about, receives equal
13 consideration and judgment as the laws of the land
14 demands. I'm not going to apologize for keeping
15 you here or thank you for listening. The attorneys
16 and the Judge have done enough of that. It is your
17 job and you have to be here, however long it takes.

18 I have a right to speak today. It is the
19 law. I only apologize to those two gentlemen right
20 there, John and Jerry. For a year and a half they
21 put up with me. I'm sure one of them wanted to gag
22 me and walk out of that door and never come back.

1 I don't care if you like me or hate me. It makes
2 no difference to me. I'll tell you this, you don't
3 even know me. You have been shown what amounts to
4 about five percent of my life. That five percent
5 included being with Nathaniel Jackson eight times
6 in the 14 months prior to this horrible incident.
7 That is all provable with prison records, Halfway
8 House records. The other 95 percent of my life was
9 dedicated to my husband, my son, my family and
10 business, and doing charity for unfortunate to
11 share the good fortune that God bestowed upon me
12 and my loved ones.

13 Why is it that a middle aged man can have
14 an affair with a 25 year old woman, tell her he
15 loves her, hates his wife, she doesn't understand
16 him, he wants to be with her, the next day he's at
17 a piano recital for his daughter with his wife.
18 There you go. Where is the equality there?
19 There's none.

20 The key players in this room are one,
21 two, three, four. Four attorneys. All white.
22 Judge Stuard, with all due respect, you are white.

1 The man who is guarding me back and forth for two
2 months, he's white. The reporter over there, he's
3 white. The other reporter, she's white. You see a
4 black camera man? No. They take the pictures they
5 want. They show the pictures they want. They
6 publish the pictures they want. That man over
7 there prints what he wants.

8 Do you remember that day, the barber
9 lady, she was here. One attorney said, "Who paid
10 you for Nate's hair cut?" She said, "Nate did."
11 Everybody heard it. You know what was in the paper
12 the next day, tell them. The barber said Donna
13 paid her. I know she was speaking English.
14 Everybody else heard it. That is why Judge Stuard
15 said don't read the papers. That is why in that
16 Jury questionnaire you filled out on your interview
17 they said, "Do you believe everything you read in
18 the paper or hear on the news?" If you would have
19 written "Yes," you wouldn't be here today. Trust
20 me.

21 Another thing about the press I didn't
22 want to forget. They never gave my attorneys fair

1 credit when they tore their witnesses up and showed
2 you they were lying and they had conflicting
3 testimony. You never saw that in the newspaper.
4 Sometimes it was printed exactly the opposite of
5 what the witnesses said, and always in the
6 Prosecution's favor. Mr. Bobbey referred to my
7 husband for a year and a half as a Howland
8 businessman. Do you know what he called me? A
9 live-in companion. A live-in lover, an employee,
10 an ex-employee, a common law wife, and a few other
11 things. I have been a business woman for about 40
12 years. You know, I worked for a plastic surgeon
13 for about 25 of those. It was just me and him. I
14 did a lot. When we moved up here, we had the Avis
15 franchise at the airport, then we had the
16 Greyhounds. I also ran a business in Youngstown, a
17 restaurant, which in that case he referred to me as
18 a restaurant worker.

19 After being in the public and attaining
20 the age of 59, I think I'm a pretty good judge of
21 character. In fact, after reading your Jury
22 questionnaires and looking at each of you for a

1 couple of weeks, I see some of you who I wouldn't
2 even care to know personally, really. And I
3 certainly wouldn't want you on my Jury judging me
4 or my life if I had a choice. I do not consider
5 you a Jury of my peers by any means.

6 I have lived here in the sixties, in
7 Miami for 27 years. It is an entirely different
8 type of society. I have traveled around the world
9 a couple of times. I have been exposed to other
10 nationalities in their own environment, their life
11 styles, different races, beliefs. And education
12 results in acceptance and understanding. Education
13 of other people results in acceptance and
14 understanding.

15 Some of you qualified to sit on my Jury
16 because you said you had no preconceived ideas with
17 regard to this case. Among the reasons you put to
18 justify that was because you didn't watch the news
19 and you didn't read the papers. That is scary,
20 folks. But you sit and you judged me. Do you know
21 what is happening in the world? How do you live
22 without reading the paper and watching the news? I

1 don't know. My husband and I at night from 10:30
2 to midnight, that was our time with our two little
3 girls, Fluffy and Blossom. We talked about
4 everything in the paper, everything on the news,
5 everything we knew that was happening, everything
6 people said, everybody's opinions.

7 I have had some experiences in my life
8 that none of you will ever have. I believe two of
9 you are 36 years old, one of you is 30 years old,
10 and Amy, you are 20 years old. I just cannot
11 believe that such young inexperienced people have
12 knowledge, insight or the wisdom to sit in judgment
13 of me, or anyone else, and certainly not in such a
14 serious case, and be able to make even a fair or
15 near proper appraisal of my life, my lifestyle, the
16 evidence, what it means, and how it applies to me.

17 For half of this case, the Prosecution
18 rehashed the Nathaniel Jackson case. They didn't
19 mention about self-defense. Mr. Becker said
20 Nathaniel Jackson shot himself. That would be
21 impossible. They said he ambushed. He would have
22 had to have been holding the gun, which he didn't

1 have, in his left hand. He's left handed. He got
2 shot first, we know that. My husband's wounds were
3 fatal. They talked about red and black sneakers
4 three, four, five times, that with so many other
5 things I turned to John because he was closest to
6 me and I said, "What the hell does that have to do
7 with me?" And you know what John said, "Nothing."
8 Speaking of red. What does red thong underwear
9 have to do with a murder case? Can anybody tell
10 me? Mr. Bailey kept harping and harping on a red
11 thong. So what? If they would have found me not
12 guilty, I would have gone out and bought his wife a
13 pair.

14 To be serious about the Prosecution for a
15 moment. I have to point out two grievous offenses
16 committed by Mr. Becker. They may not sound like
17 much, but they are the seeds of evil, racism, and
18 intolerance and AntiSemitism. Mr. Becker, in his
19 opening statement, mentioned something about a
20 black man, he looked at me, and pointed me out, and
21 said that that is her preference. How can he say
22 that? I was married to my husband, he's white, for

1 20 years. My son's father is white. I knew
2 Nathaniel Jackson two years, I saw him eight times
3 in 14 months.

4 There was one other thing Mr. Becker did
5 that I think is really unforgivable. Paul Monroe
6 was up here, the man who wanted to be Chief of
7 Police really bad, and he asked him about my
8 marital status and Paul Monroe said, "Yes, it is
9 true." I said that I was divorced from my husband
10 since 1985, but that we honored our religious vows.
11 Now, well unless you get married in the Courthouse,
12 takes religious vows, you know what those are, but
13 he had to go one step further. He had to say what
14 religion, because he knew the answer and you know
15 the answer and I know none of you forgot it.
16 "She's Jewish." Who do people hate more than black
17 people? Jews. You went in that room, thinking,
18 black and Jews. I know it. You know it. We all
19 know it, because that is the way it is in this
20 world today. Black and Jewish.

21 I guess it is obvious to you by now, I'm
22 not trying to make friends and influence people

1 here. My admission is to expose to you one thing
2 there has been too little of in this Courtroom and
3 that is the truth, the whole truth. You know when
4 you say a half truth, it sounds like something else
5 all together. Jerry told you during Jury selection
6 that your job was to find the truth. You may think
7 you found the truth. You had sexy, nasty prison
8 letters to read. The kind every inmate begs for.
9 You had phone calls from a thug to listen to. That
10 you accepted all as the truth. No question.
11 Because you didn't understand.

12 I refused to allow a forensic
13 psychiatrist or any psychiatrist to come here and
14 testify about me today. I didn't want anybody to
15 influence you. I didn't want any mitigating
16 factors and I'll tell you why later. You already
17 had your mind set already on what you would believe
18 and what everyone had testified about. But now I
19 already said that, I didn't want any mitigating
20 factors. The truth is the opposite of falsehoods.
21 We know that. Magic, smoke screens, illusions,
22 they are not the truth. If they were but they were

1 put before you over and over again. I wonder how
2 many of you were able to see through any of them,
3 some of them, maybe all of them, I doubt it.

4 None of what I reveal to you can be used
5 as evidence today. It is all over. I am making an
6 unsworn statement. It doesn't count. Whatever I
7 tell you doesn't count. Whatever I say, am I
8 correct, cannot be used as mitigating circumstances
9 whatsoever. I just want to get it out of me,
10 before I go away to a place where I'm going to come
11 out in a box.

12 First I'm going to give you a few things
13 that have been bothering me, then I'm going to go
14 into the magic tricks. You will be amazed. Do you
15 remember Kathy Thomas, my State Farm Insurance
16 agent? House, cars, life, businesses. Paul Monroe
17 said that he asked me how much life insurance did
18 we have all together. I told him \$300,000. I did
19 tell him that. That was the truth as I knew it.
20 My husband changed three policies that he had for
21 like 25 years into one, \$250,000 one. I had no
22 knowledge. He raised it to three, so he had 250, I

1 had 50, that is three.

2 She also told you for the whole month of
3 November, they played phone tag, because my husband
4 wanted to get a million dollars in coverage. He
5 knew without him, that I would be helpless. He was
6 right. So, I thought we had all of our insurance
7 through State Farm and you know what, I am
8 surprised really that Robert went anywhere else,
9 but he did, probably because it was a little
10 cheaper. And not until I was in jail, arrested and
11 in jail, my son came to take care of my, whatever
12 it had to be taken care of in one of the checking
13 accounts, I believe there was seven or eight. He
14 said, "Mom, there's an account here that ends with
15 617, my birthday, what is that?" I said, "I don't
16 know." He says, "It has just the ticket on it." I
17 said, "That is the restaurant account. It should
18 have been closed in December of 1999." Well, it
19 wasn't. We found out that my husband had been
20 making deposits for every month for 100 dollars.
21 \$87 of which in change, went to pay this Zurick
22 thing. I had no knowledge of that. It was an

1 automatic deduction.

2 Now, Mr. Bailey calls me greedy. He
3 doesn't know me. He doesn't know who I helped. He
4 doesn't know about my financial reports. We had
5 the Youngstown Greyhound, the Warren Greyhound, a
6 restaurant, apartment buildings, other interest
7 income, I was drawing \$1300 a month myself from my
8 retirement fund. We earned over \$200,000 a year.
9 Did you know that? I know that sounds like a lot
10 to most people. It used to sound like a lot to me,
11 but how can you think that \$250,000 in life
12 insurance means anything when you are making
13 \$200,000 a year? How could you believe a person
14 could murder a person for that? What would I do
15 after the second year? Why would I do that at all?

16 The Prosecutor, Mr. Watkins, I remember
17 in Mr. Jackson's case said about me, I don't know
18 why, it was his case, his trial. "She had
19 everything," he yelled and pounded the table. He's
20 right. I had everything. I had more than
21 everything. I spoiled my husband as much as I
22 could. We went walking at the mall. Whatever he

1 saw, I got for him. I made him get it. He had a
2 extensive sports collection, hundreds of thousands
3 of dollars worth. The whole downstairs was like
4 another house. It was full of the stuff. I had
5 everything. Now I have nothing. But the most
6 important thing I don't have is Robert, and my two
7 little girls. I want you to look at them. This is
8 Fluffy and Blossom. Pass it down. Get to know me
9 more. This is my husband with the little brown
10 dog. Whenever you saw him, you saw her. She slept
11 on his pillows, sat at his feet. Let him carry her
12 around and we all talked about will the real Donna
13 Roberts please stand up. You stole that. That was
14 my line. This was before I came to jail. I really
15 did dye my hair and I really did wear makeup, and
16 Mr. Bailey thinks because of that, I'm an evil
17 person. I don't think there's one woman in here
18 that doesn't care how she looks, that doesn't fix
19 her hair and doesn't wear makeup. The matriarchs
20 in the Bible, they all wore makeup from berries and
21 plants to look nice for their husbands. Today
22 we're the same.

1 I don't know if I should tell you this,
2 but as far as those policies were concerned, my
3 husband had a very bad relationship with his two
4 sons in a previous marriage. Every couple of
5 years, I would try to get them to be friends again,
6 but it never worked, because they agitated him to
7 be sick. He made me swear to him once a month,
8 because he knew if I raised my hand, it was to be
9 the truth, that I would never -- he said, "You are
10 so sweet, you are so nice, you are going to give
11 them something. If you do, swear you won't, I
12 don't want them to have anything." He wrote a Will
13 up, and in that Will, he wrote, "I want," you have
14 to mention your kids by the way, if you don't
15 mention them, then they can sue and they probably
16 get everything anyway. He did mention them to
17 avoid that problem, and he said, "I want each of my
18 sons, Alan and Michael, to receive a half penny
19 each." A total of one penny for the two of them.
20 Before I knew, before this even started, I thought
21 the verdict was going to be not guilty. If you
22 feel not guilty, you are going to figure it is

1 going to come out like that, but even though I
2 never had an idea what it would be, I signed those
3 policies and I broke my word over to his estate. I
4 didn't get a penny. I didn't want a penny. I
5 didn't care about the money. I'm not a greedy
6 person, believe me, far from it.

7 I have to spend a little extra time on
8 this one. Maybe I shouldn't even bother. I was
9 going to talk about that Santiago Mason that has
10 absolutely nothing to do with this case, but they
11 brought him in, because he was another black man
12 and yes, he's suing me because he said I tried to
13 frame him. Let's see, how do you frame somebody?
14 You know a crime is going to take place, I didn't.
15 You have to have the weapon he's going to use and
16 leave it at the scene. You have to know where he
17 is preferably with you to frame him, or he's going
18 to have an alibi. After I pressed charges against
19 him, which I took the time out of my busy day. It
20 cost me \$75. I didn't hear from him or see him for
21 three weeks. I didn't no where he was, what he was
22 doing. The man who called me every day, after

1 that, he didn't. He could have been at a
2 policeman's ball in New York, dancing a laptop
3 dance for all I know. How do you frame a person?
4 That is just -- I'm going to skip these whole two
5 pages here, about how he stole from me three times,
6 but I still gave him a break because I don't want
7 to honor him or speak about him.

8 And you know what bothered me? He said
9 when he was in my house that he didn't want
10 anything of my husband's collection because they
11 were all size small. Let me tell you about my
12 husband and his collection. They took rows and
13 rows and rows of closets, downstairs, upstairs. He
14 was a fanatic about it. He loved it. I started
15 him on it. I bought him half the stuff he had. He
16 had every Jersey, they were this clothes, five, 600
17 of them, by team, home and away, by number. If you
18 touched the sleeve of the sleeve hanging out, that
19 man would know it, that you were in that closet.
20 Trust me, believe that. If it wasn't true, I
21 wouldn't think to say it.

22 This man says he didn't want them -- my

1 husband's were no smaller than three X's. I
2 wouldn't touch them. I certainly wouldn't give
3 them to a man like that and if I did offer him a
4 Jersey, he would have probably taken it to sell it
5 for half price to buy more crack. We know he was
6 in prison a couple of times for doing that, buying
7 and selling it, using it. Then they show you a
8 picture of a sofa in my house to insult me even
9 more, a little green leather sofa on a parquet
10 floor with an area rug. You know I looked at that
11 picture but I was so stunned by listening to this
12 guy lying, lying, that it just didn't hit me until
13 when I was back in the jail in my little cell. I
14 am thinking something is wrong. He was in the
15 family room, with the fireplace and the big screen
16 T.V. This sofa that Paul Monroe took a picture of
17 and showed you, was in my computer room back by the
18 library. I never went in there. My husband did to
19 use the computer, to look for Jerseys to buy. My
20 family room has an L-shaped light turquoise sofa,
21 big, high backed, a big coffee table and wall to
22 wall carpeting. How low can you go? Did you see

1 my picture there? He says that I accused him of
2 stealing my gun and money because he wouldn't have
3 sex with me. But that I performed oral sex on him
4 on that green sofa in a room where I never go in in
5 the back of the house. You see why I have to get
6 this all out? I'm not telling you any lies. You
7 can look at the pictures. I wish the house was
8 still as it was, but I lost my home right after I
9 lost my husband. Because then you can see for
10 yourself, it was a whole big lie again. But you
11 know what, each time they tell you another fact
12 about something it makes it seem so much more real.
13 This, this, and this and that. It is such an
14 involved story, how could it not be true? How
15 could it be a lie? Trust me. It can be. It was
16 and it can be and it was. That is enough for him.

17 We're going to skip two pages of him.
18 Now we'll get into the magic part. Smoke screens,
19 illusions and magic. Those are only there to hide
20 the truth. Number one. My neighbor, remember that
21 lady, she picked me up at a certain point out from
22 our complex, not even in our neighborhood, out on

1 the street, on Market going west, away from my
2 house to Giant Eagle between 9:30 and 10:00 on
3 December 11, 2001. Was she absolutely sure? Yes,
4 9:30 to 10:00 p.m. He caught her in a lie, he
5 didn't publish it, of course. He showed her
6 testimony from way back when. She said something
7 else at that time. Now she changed it. Now, this
8 lady, I am telling you, she better get a hobby or a
9 pet or a boyfriend or a job, something, something,
10 because something is wrong with somebody like that.
11 How does she know me? If she was standing right
12 here, if she was sitting where Mr. Bailey is with
13 Mohammad Ali along her, a black man, my preference,
14 I wouldn't know who she was, honest. I never saw
15 her. I don't know where she lives. Our community
16 wasn't that big across from the Avalon Inn on the
17 golf course there, there's like four or five
18 streets. Where did she come from? Who is she? It
19 was like funny. I am in front of her, I'm going
20 suspiciously slow. How does she usually drive?
21 Slow. Okay. West, away from my home, 9:30 to
22 10:00 p.m.

1 Mr. Bailey even had that in his closing
2 statement against me. But you know what else they
3 said? They said I purposely planned an alibi.
4 What did I do? Well, I called my husband according
5 to my home phone and it is long distance from
6 Howland to Youngstown. It is on the record there
7 at about 9:04, 9:04. I left my house, I went to
8 Wal-Mart. I had to get there at about 9:17.
9 Mr. Monroe will say ten minutes. I drive
10 suspiciously slow, so it takes me a couple of extra
11 minutes. I was there about 9:17, shopped around,
12 got what I wanted. They had me on a surveillance
13 camera as an alibi at 9:37 p.m. They have a
14 receipt for what I bought, it matched what was in
15 the bag. Checked out at 9:37 p.m.

16 Now, I am at Wal-Mart on Elm Road. I am
17 coming east toward my house, not even 9:37, because
18 I take my sweet time. I, the evil woman, I wear
19 makeup, so I look in the mirror and put some
20 lipstick on. Put a CD in. By the time I get out
21 of that parking lot, it has to be 9:40. By the
22 time I get to Giant Eagle, which is still a couple

1 of minutes from my house, it is 9:50. They told
2 you all of that. And in their closing statement,
3 they told you that my neighbor swore under oath
4 that I'm going the other way, at the same time
5 suspiciously slow in front of her. The girl wonder
6 here. I defy all of the laws of physics. Not only
7 am I in two different places at once, but I'm going
8 in two different directions. How do you like that?
9 That is part one. I'm cutting out the second page
10 of her, because that is enough on her.

11 Frank Reynolds. My husband and I had two
12 Greyhound stations. You are not allowed to have
13 two in one name. His name was in Youngstown. My
14 name was in Warren. We had no other employees in
15 Warren. If he was there in the morning, I was
16 there in the afternoon. On December 11th, they
17 showed you pictures of Robert getting to the
18 Youngstown Greyhound at 2:35 in the afternoon.
19 That means I had to be in Warren between 12 and
20 5:30 which I was, because they gave you a witness,
21 a barber who said during that time I took Nate over
22 for a haircut. And another witness of theirs says

1 that Nate was there, because the bus driver also
2 came in and she introduced him to the bus driver,
3 too. Mr. Daniels, our real employee, our daytime
4 manager, he told you that I had been calling from
5 Warren, and I believe he called me about a bus
6 coming my way. Would it be on time or not. So he
7 knew I was in Warren. He knew we didn't have any
8 other employees. Robert is there. Mr. Daniels is
9 there until 3:30. "Mr. Daniels, did you see Frank
10 Reynolds there at all that day? No. In the
11 morning? No. In the afternoon? No." And he
12 knows he's the boss. Mr. Reynolds says that I went
13 to Youngstown, Ohio, all the way from Warren to
14 argue with my husband that I wanted \$3,000 and he
15 wouldn't give it to me, and Mr. Reynolds said, "She
16 gave him the dirtiest look I ever saw." You see
17 what I mean about all of these details? It makes
18 it sound really real, doesn't it? I am sitting
19 there thinking, "You know, I'm starting to doubt
20 myself here. Yes, I think I really was in Warren.
21 Yes, I was." The man is on SSI. He's mentally
22 challenged. And he's standing there telling you

1 something that is very important in my case, that I
2 was arguing with my husband about money.

3 On the news the next day on the
4 television, the girls call me out, "Look at this."
5 I never look at the paper anymore, and I don't want
6 to hear the news. I close my door and I go like
7 this. I am on the news. It said, "She was in
8 Youngstown arguing with her husband for \$3,000 and
9 later that night, he was dead." If I wanted
10 \$3,000, all I had to do was write a check. I have
11 my own income.

12 Number three, the bloody washcloth and
13 the bloody towel at the Days Inn. Criminals aren't
14 the brightest people. Criminals are not exactly
15 rocket scientists. You remember saying that? You
16 did. He did. Guess what? The police aren't,
17 either. They had a lady in here, the housekeeper,
18 a sweet little girl. She was away a couple of
19 days, she came back. She had to check with her
20 supervisor. She said, "Should I do just a routine
21 clean up? Are they staying?" Which is what, like
22 you wipe the tubs, the sink, puts new towels, fix

1 the bed, not change it? "Or should I do an
2 intensive overall for the next guest?" Her
3 supervisor, she said, "Do a complete one," because
4 Paul Monroe and Frank Dillon, they had been in and
5 out of there. All right, so now they are going to
6 go back in with this lady, because they need a
7 witness. They can't be each other's witness. So
8 they walk in with this poor sweet little girl and
9 what do they find? A bloody washcloth and a bloody
10 towel by the sink. Did you ever walk into a room
11 at a motel, a hotel, and there's a bloody washcloth
12 and a bloody towel near the bloody sink? I don't
13 think so. How would she miss that? She goes in,
14 she changes the sheets, she does the bed. She
15 takes the dirty towels, she puts clean ones. They
16 do a towel count. It is on credit card. They will
17 charge you. Wait a minute. We forgot one other
18 thing. Three black pubic hairs on the toilet.
19 Black pubic. How do you know? Did they look like
20 a black person's curly hair? And if they did,
21 guess what, that is what the hair on their head
22 looks like, too. Why were there three pubic black

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1 hairs on the toilet? The girl had at least go like
2 this to put that little paper thing on the toilet.
3 You go like this, a hair is gone. But there were
4 three black pubic hairs and two bloody towels.
5 Then outside in the dumpster that was almost empty,
6 Frank jumps in and finds bloody bandages from over
7 a week ago. It is a motel. They have a lot of
8 garbage. How is it almost empty? How could he
9 jump in? Don't they empty the garbage? What is
10 that blood on the towels and those bandages? Is it
11 road kill? Where did they get that? Because it
12 wasn't from Mr. Jackson. In fact, were you paying
13 attention when the BCI lady was up there? You
14 never heard the bloody towels were never blood
15 typed, no DNA. Neither was what they found in the
16 garbage dumpster, but there you go again. Make the
17 story complicated. Make it sound real. There's
18 the smoke screen. Wrong.

19 Number four. It's getting boring, huh?
20 Because now you already know how the magician does
21 his tricks. He cheats, it's no fun. Handcuffs. I
22 can assure you, there were no handcuffs. They said

1 it was a drawer. It was the back shelf, the
2 headboard of my bed. Jerry showed me a picture one
3 day. He said, "What is this a picture of?" I
4 said, "Handcuffs." And he said, "And what about
5 the sex toys?" I said, "I hate those. Robert is
6 always getting those things and he wants to see me
7 playing with them and I go in the second bedroom
8 and hide them in the dresser in there with more of
9 his Jerseys, underneath the pile in the top left
10 hand drawer." That is where Paul Monroe found
11 them. But here we have a picture now of handcuffs
12 and two sex toys. I was in that bedroom for months
13 and months and I never saw either one of those two
14 things, honestly. And I am thinking, why? Why do
15 they want that? The sex toys, of course, was to
16 make me look like even a dirty little old lady,
17 more dirty than you thought I was. Why were the
18 handcuffs there? Because Nathaniel Jackson had
19 mentioned them.

20 Jerry got up and asked him because Jerry
21 already knew the answer. Jerry was just letting
22 him bury himself. Dig your hole a little deeper.

1 Come on, Paul Monroe, what do you do when you
2 search a place? How would you go about it? What
3 is the procedure? Well, to begin with, it was an
4 illegal search and seizure. Paul Monroe said to
5 me, "I must treat this as a crime scene." I said,
6 "Do whatever you have to do." Then he comes to
7 Court and says, "I told her I had to search," and
8 all of his buddies backed him up. The guy who
9 wanted to be chief and all of his four lackies,
10 they all said what he said he said. "What do you
11 do, Paul?" Well, we searched every nook and cranny
12 and took everything that might be important or
13 relevant to this case. Some of the stuff was never
14 presented, because it was so irrelevant. But you
15 think handcuffs should be -- especially if
16 Nathaniel Jackson mentioned them, so how did he do
17 this? How do you do it? You go through the house,
18 you search every nook and cranny, you wear gloves
19 or something, you don't want to destroy
20 fingerprints or bodily fluids that might be on it
21 for identification purposes. You tag it. You bag
22 it. You give it a number on an inventory sheet and

1 you write the description out.

2 Now we have all of this stuff he
3 collected all during the night and Jerry sees the
4 list and says, "Show me the handcuffs." They were
5 not on the list. They set that up, I can assure
6 you on my shelf behind my headboard, handcuffs and
7 sex toys, a crime and a dirty old lady. Why? You
8 know why. They wanted you to think I'm a dirty old
9 lady and an accessory to murder. We're on number
10 five and there's only seven.

11 Number five. The marijuana. You know,
12 if there would have been marijuana in that tray
13 that night, I can assure you, I wouldn't be here
14 today and neither would you. My husband and I
15 would be somewhere. What is today? Wednesday. He
16 works, tomorrow night is Thursday. We planned to
17 have dinner somewhere really special and bring our
18 two little girls something home as a treat. Get up
19 on the bed and talk and hand feed them the treats.
20 If I had any marijuana in that tray and they said,
21 there was leaf marijuana and there were roaches,
22 maybe some of you don't know what those are. Those

1 are like to smoke a joint, and there's a little bit
2 left and anybody with half a brain knows when you
3 smoke the joint and the smoke goes through, that is
4 really strong then, it is good. So we unwrap it
5 and that is what those little rolling machines are
6 for, those cigarette machines and the paper. You
7 put the rest of it, you put the paper in and you
8 roll it and smoke it. I was doing that for years.
9 I was in three major car accidents, had three major
10 concussions. I have a bone floating in my neck and
11 a problem with my lower back. I don't want you to
12 think that is the only reason I took it was for
13 medicinal purposes like people say, because that is
14 BS. I also took it because I am a hyper person. I
15 want to relax. My husband got it for me sometimes.
16 He approved of it. And we were both happy. I have
17 never got addicted to any kind of pain killers. I
18 refused to take them. I saw how it ruined other
19 people's lives. There it was. Marijuana loose,
20 and roaches in that tray. Wait a minute. That was
21 the night of the crime, too. The police are
22 coming. I'm going to leave some marijuana on the

1 dining room table just to show them I do other
2 things wrong.

3 Next to the last. The tapes and the
4 letters. I had the opportunity along with you to
5 read a lot of those letters and listen to those
6 tapes. I had a real good memory when it comes to
7 what people say, believe me. Nobody knew until I
8 was in the fourth grade that I was blind. I can
9 see right here. Nothing past six inches. I used
10 to memorize what the teacher was saying. I was on
11 the Honor roll my whole life and the Dean's list in
12 college, because I memorized stuff.

13 Remember when they played those tapes for
14 you real loud and they made you read those words on
15 that big giant screen? At the end of some of those
16 phone calls, and at the end of some of the
17 transcripts I read, there weren't any endings.
18 They cut out the endings. Some of them were just
19 before Nathaniel got out of prison. They were
20 pretty damn important too, folks. Really
21 important. Things he said to me and things I said
22 to him, things I told him he had to do. Things I

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1 told him that might help him to get a job. Things
2 I told him that might help him to get a reality
3 check. And the letters. Did you get a list of the
4 letters or just the letters? I got a list of the
5 letters from Jerry and on there it had the dates.
6 And then there were some with -- there were
7 envelopes with no letters in them. In their rush
8 to go through them, they messed up because not only
9 are criminals nitwits, not rocket scientists and
10 not the brightest people, but neither are the
11 police, who want -- what did one of their snitches
12 say he wanted to do? Cross every T and dot every
13 I. There were too many loose endings for Paul
14 Monroe. He wanted to be the Chief of Police. He
15 wanted to solve this murder case, a murder case in
16 Howland of a white businessman, with a 30 year old
17 black man out of prison involved with his wife. So
18 anything they couldn't explain, they made up. They
19 planted. Trust me. This is the one I have been
20 waiting for. I'll leave the rest of that go.

21 I should read this so I don't miss a
22 word. Saved you three pages. I don't want

1 anything for it, not even a thank you. This is all
2 about the man who would be chief. And his lackies
3 who knew they better stay in his good graces, Paul
4 Monroe. Now, you know I admire anybody who is
5 doing their job. I said good morning to these
6 gentlemen every day. I appreciate when people do a
7 good job. I try to do that my entire life.
8 Sometimes people's lives depend on it. A lot of
9 times, in fact. I appreciate my attorneys. You.
10 They did motions and motions, and motions. They
11 had six more for today that I said just forget
12 about it, cancel them. I don't want anything.
13 Nothing. As you recall, Paul Monroe conducted a
14 warrantless, illegal search of what used to be my
15 house, from 1:50 in the morning when I left with my
16 brother for five hours or more. He read the
17 letters, he said that. They were right in the
18 bedroom, they were not hidden. My letters to
19 Nathaniel from Sunday, Monday, Tuesday, three days
20 were in the trunk of my car, which I left there in
21 a big brown bag that said, "Nathaniel Jackson," and
22 his prison number. You can't make any mistake

1 about it. His letters to me, my letters to him.
2 So, we have him reading these letters. He now
3 knows that my husband is gone, and I was consorting
4 with a black man who was in prison. By the way, he
5 was in prison for receiving stolen property, and in
6 jail for petty theft, stealing a shirt. Remember I
7 said if you want a shirt that you like, I'll buy it
8 for you. I don't want you to go back to jail. He
9 likes to borrow them. He takes them to one place
10 to another without anybody's permission. Saves cab
11 fare. He likes cars. Now we have a young black
12 man. We know -- how did Paul Monroe know he was
13 black from those letters? You know how he knew?
14 Almost every letter Nate is bragging about black
15 things that are in a man's boxers. That is how he
16 knew. Every policeman you saw up here in this
17 case, was on the force for 20 or more years. Some
18 26, some 28. Now they know about a crime scene,
19 and they know if there's an expired victim of a
20 gunshot wound, and if a weapon is found next to
21 them, the person that is charged with the crime, a
22 lot of times will plead self-defense. In murder

1 cases, once they figured out how to make a capital
2 case with the victims, what did you charge me with,
3 stealing my car and trespassing in my house.
4 There's many different facets in the importance of
5 a gun. Where it is found, if it was the weapon
6 used, who is the owner, which sometimes is
7 important. But Robert and I were in Miami where we
8 got these guns. We used to go to the range
9 together with our police officer friends who
10 properly taught us how to use them in defense of
11 ourselves, because it was a dangerous place to
12 live. Whoever took out their wallet, their credit
13 card and their identification, signed the thing,
14 and that is whose name it was in. This wasn't
15 necessary who was using it. That little one that
16 was at the house, actually I had been using it, but
17 I put it in the bedroom. Actually, I forgot to
18 tell you one thing about Mr. Mason, if he hadn't
19 stolen my gun, Robert wouldn't be carrying that gun
20 and he would be alive today. Because that man
21 stole my gun, I ran home and told Robert. I said,
22 "This SOB stole my gun, I can't believe it." I

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1 even went and begged him, "Keep the money, keep the
2 calling cards, give me back the gun." My husband
3 said, "You know what, you would be lucky if this
4 guy doesn't come back, rob you, rape you and kill
5 you." Rob you, rape you and kill you. He was
6 right on two counts. He didn't kill me. Okay.

7 Now. I'm going to read something very
8 important to you. This is nothing I am making up
9 now. This is from what is called an affidavit for
10 an arrest warrant. This has to be sworn to,
11 included in the thing before they can come and
12 arrest you. This is the bottom first page, the
13 bottom first half of the report, the first report,
14 the initial report made by the coroner. You
15 remember that little guy with the gray hair, been
16 everything, heard everything, knows everything. I
17 bet you were impressed with that. I was in the
18 medical field. Let me tell you, I wasn't a bit
19 impressed. If he was that great, believe me, he
20 wouldn't have been banished to Warren, Ohio.
21 Here's what they said. Three different sentences.
22 A revolver was found in close proximity to the

1 body. My husband has become a body. The weapon
2 was less than two feet from the body.

3 Dr. Germaniuk, upon inspecting the area of the
4 body, discovered that the .38 revolver next to the
5 victim was fully loaded. I'm not making this up.
6 You can see it on the black and white. You can see
7 it signed. It is an affidavit. That night, my
8 husband's life ended and to me it was precious and
9 to him, of course, it was precious. When I arrived
10 at home that night, and I went around my car, and I
11 was heading toward that kitchen door, there was
12 nothing on that step to impede my progress, stepped
13 up, there's a nightmare of my life. There's the
14 end of my life. There's my husband dead on the
15 cold floor alone. Not how we planned to go,
16 because we planned to be in each other's arms
17 comforting each other, believe me. And I didn't
18 even have to veer around. It didn't take me a
19 second to run and grab that phone. I didn't have
20 to veer around that revolver, it was close enough
21 to him.

22 Let's see. Now you got to keep in mind,

1 this is the second capital murder case that
2 involved this gun, this victim. And all of those
3 police officers' sworn statements. You know, even
4 if I know every word I was going to say here was
5 exactly right and, it's a disgrace really, to have
6 people in power like that of your lives, too. I
7 hope you never run into them, lie under oath, in
8 such an important thing. Okay.

9 A homicide, a weapon, a gun, nothing is
10 more important. Well, some people say that the
11 most important thing in the world is becoming the
12 Chief of Police. But, and how better to do that
13 than to solve a homicide? You got to get it all
14 wrapped up tight, Paul. You have got to cross
15 those T's and dot the I's. Advance to the murder
16 trial of Nathaniel Jackson now, which was just
17 seven months ago. He pleads self-defense, there
18 was a struggle. It is obviously a struggle.
19 Nathaniel Jackson actually got shot first, in his
20 dominant hand. There's a picture now, that the
21 Prosecution presents to this Jury, and guess what
22 it is a picture of? It is a picture of that

1 revolver that was -- wait a minute, in close
2 proximity, less than two feet and next to the
3 victim. Guess where it is now? In this trial. It
4 is all the way out in the garage, and it is on the
5 step. It is out in the garage and on the step.
6 Don't tell me somebody accidentally kicked it when
7 they went in to take the car. They don't do that
8 at the murder scene with a gun and a victim. No.
9 Out in the garage on a step. You know why?
10 Because if it would have been next to my husband,
11 it just might have looked like self-defense. Maybe
12 he was about to shoot somebody. Maybe that person
13 defended themselves. Do you know how serious that
14 is or what? Is it me? Do you know? I know you
15 know. Because I have been watching you. You look
16 like a very interesting and intelligent woman and I
17 like the way you take care of yourself, too. He
18 didn't. So, we have Sgt. Leshnack and Officer No.
19 2, Frank Dillon, and the man who would be Chief,
20 Paul Monroe. The gun is out in the garage.

21 THE COURT: We'll take a ten minute
22 break. You can finish. The Jury is admonished to

1 remember the instruction.

2 (Court in Recess at 11:40 a.m.)

3 (Resumed in Open Court at 11:55 a.m.)

4 THE COURT: Miss Roberts, you may
5 continue.

6 THE DEFENDANT: I just wanted to say
7 one more thing about Paul Monroe and his friends
8 under him, that I think when you move a gun at a
9 murder scene, it could involve tampering with
10 evidence, obstruction of justice, and of course,
11 perjury, lying under oath. Because he did say that
12 is where the gun was when he was on that stand.

13 This is the end. You remember that
14 before I began I told you that I didn't get up here
15 to beg you to spare my life. I meant that. All I
16 wanted was a chance to speak the truth clearly and
17 plainly, so that it would finally be heard. After
18 so many lies, I'm going to take the pressure off of
19 you and off of Judge Stuard, and any guilt you
20 might feel in the future. You shouldn't ever feel
21 anything, because you did your job with what you
22 were presented with. I'm asking for justice,

1 though. I'll beg you for justice and I'll demand
2 justice, so now in the name of justice, I ask you
3 to sentence me properly, like you swore to do as a
4 juror. There's only one sentence you can bring
5 back with all 12 signatures. You have all of the
6 aggravating -- remember the Judge told you like
7 this, here's the aggravating, if the mitigating
8 just comes a little bit more, you can't give me the
9 death penalty. We haven't given you one piece of
10 mitigating evidence. You are bound by law to give
11 me one sentence, the death penalty. You have no
12 other choice. That is what I'm asking you to do,
13 because that is the right thing to do. That is the
14 only thing to do. Mr. Nathaniel Jackson was
15 charged with the same crimes, he was tried, he was
16 found guilty, he was sentenced to death. If you
17 pick any other one, there's going to be a lot of
18 people upset, and they are going to want to know
19 why. They told you that you couldn't consider that
20 I wasn't the triggerman. You agreed you would not,
21 that you could still get the death penalty if I
22 wasn't or you wouldn't be here. Also, he said --

1 well, Mr. Becker said, "You are going to look at
2 Miss Roberts, you think it, look at that nice
3 little old lady with her attorneys." That is
4 exactly what he said, "old lady." He kept saying
5 that. Why did you have to keep saying "old"? But
6 that can't influence you, just because she's a nice
7 little lady. You have to go by the law and you
8 said okay.

9 If the aggravating circumstances outweigh
10 the mitigating factors, yes, I would give her the
11 death penalty. You all signed your names that I'm
12 guilty of aggravated murder, and you haven't been
13 presented any other evidence to change anything.
14 Here's what I am looking for. I don't want to say
15 it wrong. There's only one difference between me
16 and Nathaniel Jackson. I'm white. He's black.
17 That is it.

18 In this Court, it doesn't matter if you
19 are a male or female, young or old, rich or poor, I
20 had good attorneys. I didn't use one penny of my
21 husband's money by the way to pay them. I used my
22 retirement fund of my own. I just want you to know

1 that. I have the benefit of two wonderful,
2 brilliant men. Mr. Nathaniel Jackson had -- what
3 does a poor black man have? An incompetent Public
4 Defender. I won't tell you his name, but trust me
5 that is exactly what he is, what he was and what he
6 always will be. So, those people, they always feel
7 so helpless and hopeless. I guess it is always
8 been like that, you know. They will just make God
9 cry another tear, because there's never going to be
10 equality. Never.

11 It is going to be like hundreds of years
12 ago. The same charges, same verdict. There can be
13 only one sentence, you better do the right thing.
14 You don't want to backtrack in any progress we
15 might have made that saying, all men are created
16 equal. Yes, right. We talked about that at the
17 beginning. All men are not created equal. You
18 know that and I know. As my son said, you know it,
19 I know it, and the American people know it.

20 There's one more thing. Let this be
21 perfectly clear especially to the news media. This
22 is in no way an admission of guilt, and should not

1 be misconstrued as such. There's none. Not on my
2 part, and not on that of Nathaniel Jackson's. But
3 since you found us guilty, I wanted to make some
4 good of it, at least maybe somebody will,
5 something, some little thing, maybe just a reporter
6 writing things right. Maybe a reporter not having
7 to slant on it to make it a sensationalist thing,
8 so somebody will buy another paper. Look, every
9 single time he wrote that story, a Howland
10 businessman, they plotted a murder, it was clear
11 and plain. It was a plan, a plot, plainly in those
12 letters. I read those letters. I don't see any
13 plan or plot. I see he came to work with me. I
14 was teaching him the computer, went back to
15 Youngstown. He was going to come the next day. I
16 didn't see a plot or a plan.

17 I loved my husband very much. My husband
18 loved me. I don't want any of you leaving here,
19 thinking that I didn't. I don't want you to leave
20 thinking that my husband died not being loved. I
21 said a lot of things that weren't true to
22 Nathaniel. My husband never touched me. He never

1 laid a hand on me. He gave me everything I wanted,
2 the same as I did to him. He spoiled me, I spoiled
3 him. He was a wonderful man. He was a wonderful
4 man to my son from another gentleman, wasn't he?
5 Really.

6 Robert's birthday was October 24th. That
7 time before December 11th, Michael flew all the way
8 from New Hampshire so we could all go out for our
9 birthday dinner especially. We had beautiful
10 pictures of all of us hugging and kissing and
11 smiling. That is the way it really was. I just
12 wanted you to know that.

13 I wanted to fill a wish that if I had any
14 wishes, I wish I would have stayed home that night.
15 Or that anything that happened bad would have
16 happened to me. My husband's life is over. But so
17 is his suffering. And the minute his life was
18 over, all of my suffering began. I don't want to
19 do this, because Mr. Bailey will say, "You are
20 doing it on purpose," and I'm not.

21 So, I am taking my saying back, I am
22 using it for the last time. You can't have any

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1 more. I know what you are thinking, here it comes.
2 Will the real Donna Roberts please sit down and I
3 will. You do what is right.

4 THE COURT: Does the Defense wish to
5 offer anything further?

6 MR. INGRAM: No, Your Honor. The
7 Defense is instructed to rest.

8 THE COURT: Okay. Ladies and
9 gentlemen, we have reached the noon hour. I'm
10 going to discharge you for one hour to get lunch.
11 When you come back, the State will present whatever
12 evidence they wish to present. We'll go right into
13 the closing instructions and then the case will be
14 given to the Jury. You are to remember the
15 admonition that you have been given repeatedly
16 throughout the trial. You have all followed that
17 very well. Please do so over the next hour and
18 we'll see you back here. Have a nice lunch.

19 (Court in recess at 12:05 p.m.)

20 (Resumed in Open Court at 1:30 p.m.)

21 THE COURT: Gentlemen of the
22 Prosecution, I believe that the Defense has nothing

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1 further to present. Do you have anything further
2 to put on the record?

3 MR. BAILEY: No further testimony.

4 THE COURT: The Exhibits then have
5 been admitted and will be part of the information
6 that goes back to the Jury. Ladies and gentlemen,
7 first of all, on behalf of all concerned, I want to
8 again thank you for giving of your time to this
9 very important obligation and duty to our system.

10 MR. BAILEY: Can we approach?

11 (SIDE BAR DISCUSSION, OFF THE RECORD AND
12 OUT OF HEARING)

13 THE COURT: I have misinterpreted
14 what I have been told. I apologize to counsel.
15 You wish to give closing argument?

16 MR. BECKER: Yes.

17 THE COURT: The State may proceed.

18 CLOSING ARGUMENT BY MR. BECKER:

19 MR. BECKER: Ladies and gentlemen, I
20 want to thank each and every one of you
21 individually and collectively for the service that
22 you have provided to this community. I think you

1 have a very important duty, a very important
2 function in this community. And to this point, you
3 have done an excellent job of evaluating this case.

4 As we mentioned to you a long time ago,
5 this is probably the most important civic duty
6 short of serving in the military that any of you
7 ever will undertake. We're to the point now where
8 it is your job to fulfill your oath, and your oath,
9 if you recall, was to uphold the law and truly try
10 this case. Your decision is not to change the law
11 if you don't like it, but to impose the law as the
12 Court is going to give it to you here in a few
13 moments.

14 The only issue in this phase of these
15 proceedings is to the aggravating circumstances
16 that you have already found this Defendant guilty
17 of, outweigh beyond a reasonable doubt any and all,
18 if there are any, mitigating factors.

19 What are the aggravating circumstances in
20 this case? They are the death of Robert Fingerhut
21 during the aggravated burglary with prior
22 calculation and design and the death of Robert

1 Fingerhut during the aggravated robbery with prior
2 calculation and design. What are you going to have
3 in terms of prior calculation and design? You are
4 going to have all of the letters, all of the phone
5 calls, the transcripts from those telephone calls,
6 as the prior calculation and design.

7 Now, at this point in the case, I am
8 going to tell you I am prohibited by law from
9 saying anything about Miss Roberts' unsworn
10 statement except to remind you that it was unsworn,
11 it was not under oath or affirmation and not
12 subject to cross examination. That is all I'm
13 permitted to tell you about that statement.

14 This case is one of those cases that
15 speaks volumes from the evidence though and the
16 evidence in this case clearly shows that the prior
17 calculation and design in this case was
18 overwhelming. You could probably sit on 100 Jury
19 trials and never have as much prior calculation and
20 design as you have in this case. Nathaniel Jackson
21 was picked up from prison. Nathaniel Jackson went
22 to the Wagon Wheel Inn for his first night of

1 lovemaking after he was released from prison. He
2 was gotten gloves, not thick ones, but the thin
3 kind that would be good for the job. Gun, a
4 haircut, a last meal at the Red Lobster before he
5 went off to do his duty. The ski mask that had to
6 be searched for in four different stores by this
7 Defendant. The escape vehicle, the bullets to
8 cause the death of Robert Fingerhut, the hideout
9 after the murder as previously discussed in the
10 phone calls. That would be the Boardman Motel,
11 checking up with the accountant to make sure that
12 the thing with all of the zeros was paid for. The
13 only thing that Nate Jackson provided to this case
14 was this. His index finger. This Defendant
15 provided everything else to Nate Jackson, the car,
16 the mask, the leather gloves, the place to hide out
17 afterwards; the bullets, the entry into the home.

18 With respect to the aggravated burglary,
19 I submit to you that you can have no worse form of
20 aggravated burglary than what you had in this case.
21 This aggravated burglary was not committed to steal
22 valuables, to rape someone, to kidnap someone. It

1 was committed to murder someone with prior
2 calculation and design. That is the worst form of
3 aggravated burglary you could possibly have.

4 This Defendant left Nate Jackson in that
5 home for one purpose, to ambush Robert S. Fingerhut
6 when he came home. You will recall relating to the
7 aggravated robbery, that Nate Jackson's DNA was
8 found in that motor vehicle. Nate Jackson dumped
9 that vehicle with the keys in it just blocks from
10 where he was arrested in Youngstown, Ohio. And
11 that aggravated robbery was not committed to steal
12 a wallet. It was not committed to steal the
13 jewelry. It was not committed to steal credit
14 cards or valuables. Wasn't even taken to take the
15 car to a chop shop to sell. That aggravated
16 robbery was committed to escape the aggravated
17 murder that had been planned with prior calculation
18 and design, and I submit to you that that
19 aggravated robbery that was committed, was the
20 worst form of aggravated robbery you can have.

21 Listen very closely to the very simple
22 instruction the Court is going to give you in this

1 case. You are going to take the aggravating
2 circumstances and put them in one side of that
3 scale. On the other side, you are going to put
4 any, if there are any, mitigating factors on the
5 other side. I submit to you that there probably
6 aren't any mitigating factors. You are free, as
7 jurors, to find any, and even if you find some,
8 there's no way that they tipped the scales back.
9 Because the aggravating circumstances in this case,
10 are clearly beyond a reasonable doubt and clearly
11 outweighed beyond a reasonable doubt, if there is
12 any mitigating factors.

13 What you are going to do is a very simple
14 test. You are going to take some mitigating
15 factors and I think the Court will tell you that
16 there probably are three things you can consider as
17 mitigating factors. The unsworn statement of the
18 Defendant, which again I remind you I cannot
19 comment upon by law other than to say it was given
20 not under oath and not subject to cross
21 examination.

22 Any other factors, anything that you can

1 think of, that would provide mitigation for Miss
2 Roberts. And finally, whether or not she's a
3 participant in the offense and not the principal
4 offender, but her level and degree of
5 participation. And I submit to you, that without
6 Donna Roberts participation in this crime, it
7 doesn't happen. The only thing she didn't provide
8 was the finger that pulled the trigger.

9 So, you are going to take those
10 mitigating factors and you are going to put them in
11 that scale and you are going to assign, each and
12 every one of you, whatever weight you want to
13 assign to those mitigating factors. And on the
14 other side of that scale, you are going to take the
15 aggravating circumstances, the letters, the phone
16 calls, the tapes, the bullets, the bullet that was
17 removed from Mr. Fingerhut's brain, and you are
18 going to put them on the other side of that scale.
19 You think those aggravating circumstances outweigh
20 beyond a reasonable doubt any mitigation you have
21 heard?

22 Each and every one of you is in this Jury

1 box because you sat at that chair in April or May
2 and each and every one of you told us under oath,
3 that if the facts warranted it and the law
4 permitted it, you could go back to that Jury room
5 and sign a piece of paper calling for the
6 imposition of the death penalty. I submit to you,
7 that that time and place is now and here. The time
8 has come for each and every one of you to live up
9 to what your oath was, to uphold the law.

10 Our system of justice is not a perfect
11 system of justice. But it is a good system of
12 justice, and it is only as good as the people that
13 are dispensing that justice, in this case, that is
14 you.

15 There's two tragedies in cases like this.
16 The first is that a person who does not deserve the
17 death penalty gets the death penalty. The other
18 tragedy is someone who deserves the death penalty
19 doesn't get the death penalty. The time has come
20 for each and every one of you to do what you said
21 you could do. The time has come for each and every
22 one of you to make sure that our system of justice

1 works.

2 This case started out with a statement,
3 "Will the real Donna Roberts please stand up." I
4 submit to each and every one of you, the only
5 people that can make the real Donna Roberts stand
6 up and take responsibility for her actions of
7 December 11, 2001 are each and every one of you
8 jurors. And each and every one of you have taken
9 an oath that you would do that. There's no
10 mitigation. The aggravating circumstances outweigh
11 just about all doubt, any mitigating factors, if
12 there are any in this case.

13 Your duty is now clear. You must follow
14 the Court's law. Thank you.

15 THE COURT: Thank you, Mr. Becker.
16 Gentlemen?

17 MR. INGRAM: I am instructed to
18 waive argument and have no choice but to abide by
19 that instruction.

20 THE COURT: Very well. The State
21 have anything further?

22 MR. BAILEY: No, Your Honor.

1 THE COURT: As I prematurely started
2 to say, we thank you for your participation. We
3 have all been impressed by the attention that each
4 of you have given to everything that has gone on in
5 the Courtroom and the manner in which you followed
6 the instructions of the Court and we thank you for
7 that.

8 Now at the first phase of this trial, you
9 decided that the Defendant, Donna Roberts, was
10 guilty of two counts of Aggravated Murder, as well
11 as two specifications of aggravating circumstances
12 that were attached to the first count and two
13 specifications that were attached to the second
14 count. Because the acts for which the Defendant
15 stands convicted as to Counts One and Two
16 constitute only one event, she can only be punished
17 for one offense of Aggravated Murder of Robert S.
18 Fingerhut. As I informed you at the opening, as a
19 result, the State of Ohio has elected to dismiss
20 the second count of the indictment at this second
21 phase of the trial.

22 This means that the Defendant stands

1 convicted for penalty purposes of Count One of the
2 indictment, together with the two specifications,
3 attached to Count One. You are instructed to
4 disregard the second count of Aggravated Murder and
5 its specifications and not consider them for any
6 purpose.

7 In this phase of the proceedings, the
8 Defendant has presented an unsworn statement. The
9 State has offered arguments that the evidence of
10 the aggravating circumstances outweighs, by proof
11 beyond a reasonable doubt, the mitigating factors,
12 and the State seeks the death penalty rather than
13 one of the life sentences. Your duty now is to
14 determine if the aggravating circumstances outweigh
15 by proof beyond a reasonable doubt, any mitigating
16 factors you have found, and based upon your
17 findings, you must make a determination on the
18 sentence to be imposed for the Aggravated Murder
19 conviction.

20 It is now my duty to instruct you on the
21 law which applies to these proceedings. Again, the
22 Court and the Jury have separate functions. You

1 decide the disputed facts and the Court provides
2 the instruction of law. And it is your sworn duty
3 to accept these instructions and to apply the law
4 as it is given to you. It is your sworn duty to
5 accept these instructions. You are not permitted
6 to change the law, nor to apply your own conception
7 of what you think the law is or should be and you
8 are not to disregard the law.

9 Now the State of Ohio has the burden of
10 proving by proof beyond a reasonable doubt, that
11 any one or all of the aggravating circumstances in
12 the first count of the indictment, which the
13 Defendant has been found guilty of committing,
14 outweigh any or all of the factors in mitigation.

15 The Defendant has no such burden of
16 proof, however, the Defendant does have the burden
17 to go forward with the evidence on mitigating
18 factors. As noted, the State has already proven in
19 the first phase of this case that aggravating
20 circumstances exist in this case. In reaching your
21 verdict, you are instructed that you will consider
22 all of the evidence and Exhibits which the Court

1 has admitted as relevant to the aggravating
2 circumstances in this phase of the trial along with
3 all of the additional evidence and Exhibits, which
4 the Court has admitted as relevant to the
5 mitigating factors.

6 You have heard the term "outweigh" quite
7 a bit during this proceeding. To outweigh means to
8 weigh more than, to be more important than. In
9 that regard, it is the quality of the evidence that
10 must be given consideration by you, and the quality
11 of the evidence may or may not be commensurate with
12 the quantity of the evidence, that is, the number
13 of witnesses or Exhibits presented.

14 Remember that reasonable doubt is present
15 when after you have carefully considered and
16 compared all of the evidence, you cannot say you
17 are firmly convinced that the aggravating
18 circumstances outweigh the factors in mitigation.

19 Reasonable doubt is based on reason and
20 common sense. Reasonable doubt is not mere
21 possible doubt because everything relating to human
22 affairs and depending on moral evidence is open to

1 some possible or imaginary doubt. Proof beyond a
2 reasonable doubt is proof of such a character, that
3 an ordinary person would be willing to rely and act
4 upon it in the most important of his or her own
5 affairs.

6 If you are convinced that the aggravating
7 circumstances which the Defendant was found guilty
8 of committing as set forth in Count One outweigh,
9 by proof beyond a reasonable doubt, the factors in
10 mitigation, then the State has met its burden of
11 proof and the Jury shall recommend to the Court
12 that the sentence of death should be imposed on the
13 Defendant.

14 If you find the aggravating circumstances
15 and the mitigating factors to be of equal weight,
16 then you must choose one of the life sentences.

17 You shall sentence the Defendant to death
18 only if you unanimously find by proof beyond a
19 reasonable doubt, that the aggravating
20 circumstances outweigh the mitigating factors.

21 If you do not so find, you shall consider
22 either a recommendation that the Defendant be

1 sentenced to life without parole eligibility or a
2 life sentence with parole eligibility after serving
3 thirty (30) full years of imprisonment, or a
4 sentence of life with parole eligibility after
5 serving twenty-five (25) full years of
6 imprisonment.

7 Now what is and what is not evidence in
8 this proceeding? Again the indictment is not
9 evidence. It simply informed the Defendant that
10 she was charged with Aggravated Murder with
11 specifications of aggravating circumstances and the
12 indictment was the vehicle for bringing this matter
13 to Court. Also, the closing arguments which you
14 have just heard, are not evidence. Closing
15 arguments by counsel are designed to assist you,
16 but they are not evidence.

17 Then, what is the evidence in this
18 proceeding? It is any testimony you heard in the
19 first phase of this trial and any of the Exhibits
20 admitted into evidence in the first phase, which
21 this Court has determined to be relevant to proving
22 any of the aggravating circumstances or mitigating

1 factors and which you had the opportunity to
2 examine and which you will have with you again when
3 you deliberate in this proceeding.

4 And once again, you are the sole judge of
5 fact, also the credibility of witnesses and the
6 weight of that evidence. Again, to weigh the
7 evidence, you must consider the credibility of the
8 witnesses and to do this, you will apply the tests
9 of truthfulness, which you apply in your daily
10 lives.

11 These tests again include the appearance
12 of each witness upon the stand, the manner of
13 testifying, the reasonableness of the testimony,
14 the opportunity the witness had to see, hear, and
15 know about that to which they have testified; their
16 accuracy of memory, their frankness or lack of it,
17 their intelligence, interest or bias, if any,
18 together with all of the facts and circumstances
19 surrounding the testimony.

20 Applying these tests, you will assign to
21 the testimony of each witness such weight as you
22 deem proper. You are not required to believe the

1 testimony of any witness simply because he or she
2 was under oath. You may believe or disbelieve all
3 or any part of the testimony of any witness. It is
4 within your province to determine what testimony is
5 worthy of belief and what testimony is not.

6 The Defendant gave an unsworn statement
7 in this matter, and therefore cross examination by
8 the State was not permitted. It is her right under
9 Ohio law to do so and this statement may be
10 considered by you for whatever purpose you may
11 assign.

12 What are aggravating circumstances? In
13 this particular case, the aggravating circumstances
14 are precisely set out in the specifications
15 contained in the verdict forms on these
16 specifications. There are two (2) aggravating
17 circumstances relating to Count One.

18 Let me read those over: (1) That the
19 Defendant was a complicitor to aggravated murder
20 and that the aggravated murder was committed while
21 the accomplice was committing, attempting to
22 commit, or fleeing immediately after committing

1 aggravated burglary, and that the Defendant
2 solicited, procured, aided or abetted the
3 accomplice to the aggravated murder, with prior
4 calculation and design. (2) That the Defendant
5 was a complicitor to aggravated murder and that the
6 aggravated murder was committed while the
7 accomplice was committing, attempting to commit, or
8 fleeing immediately after committing aggravated
9 robbery and that the Defendant solicited, procured,
10 aided or abetted the accomplice to the aggravated
11 murder with prior calculation and design.

12 The Aggravated Murder itself is not to be
13 considered as aggravating circumstances or to
14 determine penalty herein, except as it relates to
15 Specification One to Count One, alleging that the
16 Aggravated Murder of Robert S. Fingerhut, was the
17 criminal offense for which the accomplice
18 trespassed in the commission of the Aggravated
19 Burglary.

20 Counsel approach the bench, please.
21 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT OF
22 HEARING)

1 THE COURT: Now what are mitigating
2 factors? Mitigating factors are factors that,
3 while they do not justify the crime of Aggravated
4 Murder, nevertheless, if you find they exist, shall
5 be considered by you as extenuating, lessening,
6 weakening, the degree of the sentence.

7 Gentlemen, we struck that one. We took
8 that out. I'll read this over again. I apologize.

9 Mitigating factors are factors that while
10 they do not justify the crime of Aggravated Murder,
11 nevertheless, if you find they exist, shall be
12 considered by you as extenuating, lessening,
13 weakening, to some extent, or reducing the degree
14 of the sentence. Mitigating factors are not
15 related to Donna Marie Roberts' culpability, but
16 rather, are those factors which are relevant to the
17 issue of whether Donna Marie Roberts should be
18 sentenced to death.

19 You are to weigh as mitigating factors,
20 such things including, but not limited to: (1) The
21 unsworn statement of the Defendant. (2) Any other
22 factors in mitigation that are relevant to the

1 issue of whether Donna Marie Roberts should be
2 sentenced to death. (3) The offender was a
3 participant in the offense, but not the principal
4 offender, the degree of her participation in the
5 offense, and the degree of the offender's
6 participation in the acts that led to the death of
7 the victim.

8 Now, ladies and gentlemen, when you
9 retire to commence these deliberations, remember,
10 your initial conduct upon entering the Jury room is
11 a matter of importance. It is not wise immediately
12 to express a determination or to insist upon a
13 certain verdict because if your sense of pride is
14 aroused, you may hesitate to change your position
15 even if you decide you are wrong.

16 I would suggest that you consult with one
17 another and consider each other's views and
18 deliberate with the objective of reaching an
19 agreement. Again, each of you must decide this
20 matter for yourself, but you should do so only
21 after a discussion and consideration with your
22 fellow jurors along with all of the evidence and

1 the Exhibits which this Court has determined to be
2 relevant in this phase.

3 Do not hesitate to change an opinion if
4 convinced that it is wrong. But just as
5 importantly you should not surrender honest
6 convictions in order to be congenial or to reach a
7 verdict solely because of the opinion of the other
8 jurors.

9 In reaching a verdict in this proceeding,
10 you must consider all of the evidence applicable to
11 the statutory aggravating circumstances and the
12 mitigating factors admitted at both phases of the
13 trial, and the arguments of counsel in this phase
14 of the trial. You must then determine whether the
15 aggravating circumstances which the Defendant,
16 Donna Marie Roberts, was found guilty of committing
17 in the aggravated murder of Robert S. Fingerhut,
18 are sufficient by proof beyond a reasonable doubt
19 to outweigh the mitigating factors present in this
20 case.

21 All twelve (12) members of the Jury must
22 agree on a recommendation of a death sentence. If

1 all twelve (12) jurors find that the aggravating
2 circumstances which the Defendant, Donna Marie
3 Roberts, was found guilty of committing in the
4 death of Robert S. Fingerhut, outweigh by proof
5 beyond a reasonable doubt, the mitigating factors,
6 then you shall return such a finding to the Court,
7 and as a matter of law, make a recommendation that
8 the sentence of death be ordered.

9 On the other hand, if any one of you
10 finds that the State has not proved beyond a
11 reasonable doubt that the aggravating circumstances
12 which the Defendant, Donna Marie Roberts, was found
13 guilty of committing in the death of Robert S.
14 Fingerhut, outweigh the mitigating factors, or if
15 you are unable to reach a unanimous verdict
16 recommending the death penalty, then in either of
17 these events, and as a matter of law, you must
18 determine which of three (3) possible life
19 imprisonment sentences to impose.

20 Again, those three (3) life imprisonment
21 sentences are as follows: (1) That the Defendant
22 be sentenced to life imprisonment without parole

1 eligibility. (2) That the Defendant be sentenced
2 to life imprisonment with parole eligibility after
3 thirty (30) full years of imprisonment. Or (3)
4 That the Defendant be sentenced to life
5 imprisonment with parole eligibility after
6 twenty-five (25) full years of imprisonment.

7 Now, you will have with you back in the
8 Jury room the following verdict forms. I'll read
9 them briefly to you. They are very similar to the
10 ones you had in the first phase.

11 The one reads Count One, Specification
12 One, Aggravated Burglary. Under that is Jury
13 finding and recommendation of death sentence.

14 "We, the Jury, being duly empaneled and
15 sworn or affirmed, do hereby find that the
16 aggravating circumstances that the Defendant, Donna
17 Marie Roberts, was found guilty of committing with
18 reference to the death of Robert S. Fingerhut,
19 outweigh, by proof beyond a reasonable doubt, the
20 mitigating factors presented in this case. We,
21 therefore, find and recommend that the sentence of
22 death be imposed upon the Defendant, Donna Marie

1 Roberts." There's a place for the foreperson to
2 enter the date, and again, twelve signature lines.

3 Another choice that you have, "We, the
4 Jury, being duly empaneled and sworn or affirmed,
5 do hereby find that the State has not proved that
6 the aggravated circumstances that the Defendant,
7 Donna Marie Roberts, was found guilty of committing
8 with reference to the death of Robert S. Fingerhut,
9 outweigh by proof beyond a reasonable doubt, the
10 mitigating factors presented in this case, or that
11 the Jury is unable to reach a unanimous verdict
12 recommending the sentence of death. We, therefore,
13 find and recommend that the following sentence be
14 imposed upon the Defendant, Donna Marie Roberts."
15 And there's an instruction, place an "X" in the
16 appropriate space, and listed below are the three
17 other possibilities you have for life sentences.
18 Date, signature.

19 Another form. "We, the Jury, being duly
20 empaneled and sworn or affirmed do hereby find that
21 the aggravating circumstances that the Defendant
22 Donna Marie Roberts, was found guilty of committing

1 with reference to the death of Robert S. Fingerhut,
2 outweigh by proof beyond a reasonable doubt, the
3 mitigating factors presented in this case, we,
4 therefore, find and recommend that the sentence of
5 death be imposed upon the Defendant, Donna Marie
6 Roberts."

7 Another form that you have. "We, the
8 Jury, being duly empaneled and sworn or affirmed,
9 do hereby find that the State has not proved that
10 the aggravating circumstances that the Defendant,
11 Donna Marie Roberts, was found guilty of committing
12 in reference to the death of Robert S. Fingerhut,
13 outweigh by proof beyond a reasonable doubt, the
14 mitigating factors presented in this case, or that
15 the Jury is unable to reach a unanimous verdict,
16 recommending the death sentence. We, therefore,
17 find and recommend the following sentence be
18 imposed upon the Defendant, Donna Marie Roberts."
19 Again, you have three possible life sentences,
20 twelve signature lines and the date.

21 We have the four verdict forms.

22 MR. BECKER: Is one for the

1 aggravated burglary spec and one is for the
2 aggravated robbery spec?

3 (SIDE BAR DISCUSSION, OFF THE RECORD AND
4 OUT OF HEARING)

5 THE COURT: You will have those four
6 forms with you and you will use those that you find
7 appropriate according to your decision.

8 Now, as I have stated, this being a
9 criminal case, it will take of course, all twelve
10 (12) of you to reach a decision on any verdict that
11 you return.

12 When you have reached your verdict in
13 this matter, you will complete the verdict form
14 which corresponds to your decision, signing the
15 respective verdict form in ink.

16 It is your duty to carefully weigh the
17 evidence, decide all disputed questions of fact,
18 apply the instructions of the Court to your
19 findings, and render your verdict accordingly.

20 In fulfilling your duty, your efforts
21 must be to arrive at a just verdict. Remember you
22 must not be influenced in your deliberations by any

1 consideration of bias, sympathy or prejudice. You
2 are to consider all of the evidence and make your
3 findings with intelligence and impartiality, so
4 that the State of Ohio and the Defendant will feel
5 that this proceeding was fairly and impartially
6 tried.

7 Once more, if during the course of this
8 proceeding, the Court has said or done anything
9 that you consider an indication of the Court's view
10 on the issues of sentencing, you are instructed to
11 disregard that. It has not been my intention, it
12 would be most improper for any Judge to attempt to
13 do that.

14 Now the Court is going to place in your
15 possession the Exhibits which have been admitted
16 into evidence during this phase of the trial and
17 the verdict forms which I have just read to you.
18 The person you select as foreperson will retain the
19 verdict forms and make sure that the Exhibits are
20 delivered to the Bailiff once you have concluded
21 your finding. And the foreperson will bring the
22 verdict forms back into the Jury box once you have

1 reached a verdict. Until your verdict is announced
2 in Open Court, you are not to disclose to anyone
3 else the status of your deliberations or the nature
4 of your verdict. Whenever all twelve (12), and I
5 repeat, all twelve (12) of you agree on your
6 verdict, you will notify the Bailiff that you are
7 ready to return to the Courtroom.

8 You will have with you the Exhibits and
9 verdict forms and the copy of these instructions
10 which I have just read and a copy of the verdicts
11 in the first phase of the trial.

12 Before we put the Jury into
13 deliberations, is there any objection to the Court
14 at this point dismissing the alternates?

15 MR. BAILEY: No.

16 MR. INGRAM: Not from the Defense.

17 THE COURT: Let me ask the Jury.

18 Are you ready and able to begin deliberations?

19 (All nodded affirmatively.)

20 THE COURT: You three ladies, you
21 have been just as attentive as the Jury itself, and
22 we thank you for your time and your attention. I'm

1 discharging you from any further responsibilities
2 at this time. I would make one request and that is
3 that you not discuss your opinion on anything or
4 any of the evidence that you have heard until this
5 Jury has returned a verdict on this second phase.
6 We thank you very much. You may keep your seat for
7 the time being.

8 Our Bailiff, Miss Brown, you have
9 previously been sworn in this matter, so I need not
10 do that again. I am placing this Jury into your
11 care and custody, you will see that their comforts
12 are provided for until they have arrived at a
13 verdict and see that no one disturbs them.

14 Ladies and gentlemen, do you want ten
15 minutes before you start on your deliberations or
16 are you ready to go right in? Take ten minutes and
17 meet outside the Jury room and Laurie will put you
18 all back together. Remember the admonition, not to
19 talk to anybody.

20 (Court in Recess at 2:10 p.m.)

21 (Jurors commenced deliberations at 2:25 p.m.)

22 (Jury returned to Courtroom with verdict at 4:15 p.m.)

1 THE COURT: Ladies and gentlemen,
2 have you arrived at a verdict in this matter?

3 FORELADY: Yes.

4 THE COURT: The verdict delivered to
5 me by this Jury reads as follows. "We, the Jury,
6 being duly empaneled and sworn or affirmed do
7 hereby find that the aggravated circumstances that
8 the Defendant, Donna Marie Roberts, was found
9 guilty of committing with reference to the death of
10 Robert S. Fingerhut outweigh by proof beyond a
11 reasonable doubt the mitigating factors presented
12 in this case. We, therefore, find and recommend
13 that the sentence of death be imposed upon
14 Defendant, Donna Marie Roberts." Dated June 4,
15 this year. Signed by all 12 members of the Jury.

16 Second verdict reads, "We, the Jury,
17 being duly empaneled and sworn or affirmed do
18 hereby find that the aggravating circumstances,
19 that the Defendant, Donna Marie Roberts, was found
20 guilty of committing with reference to the death of
21 Robert S. Fingerhut, outweigh by proof beyond a
22 reasonable doubt the mitigating factors presented

1 in this case. We, therefore, find and recommend
2 that the sentence of death be imposed upon the
3 Defendant, Donna Marie Roberts." Dated June 4,
4 2003, and again signed by all 12 members of the
5 Jury. And the other two verdict forms are blank.

6 Ladies and gentlemen, have I properly
7 read the verdict rendered by you?

8 (All nodded affirmatively.)

9 THE COURT: Does the State wish to
10 poll the Jury?

11 MR. BAILEY: No.

12 THE COURT: Does the Defense?

13 MR. INGRAM: Yes.

14 THE COURT: I'll refer to you by
15 number rather than name. Juror No. one, have I
16 properly read your verdict?

17 JUROR NO. 1: Yes.

18 THE COURT: Number two?

19 JUROR NO. 2: Yes.

20 THE COURT: Number three?

21 JUROR NO. 3: Yes.

22 THE COURT: Number four?

1 JUROR NO. 4: Yes.

2 THE COURT: Number five?

3 JUROR NO. 5: Yes.

4 THE COURT: Number six?

5 JUROR NO. 6: Yes.

6 THE COURT: Number seven?

7 JUROR NO. 7: Yes.

8 THE COURT: Number 8?

9 JUROR NO. 8: Yes.

10 THE COURT: Number 9?

11 JUROR NO. 9: Yes.

12 THE COURT: Number 10?

13 JUROR NO. 10: Yes.

14 THE COURT: Number 11?

15 JUROR NO. 11: Yes.

16 THE COURT: Number 12?

17 JUROR NO. 12: Yes.

18 THE COURT: Folks, you have been

19 asked to take a good deal of your time from your

20 daily pursuits and this is, I'm sure, not a

21 pleasant duty for anyone to engage in, but I

22 commend you for participating. So many people will

1 not participate in any Jury trial, let alone a
2 trial of this nature. You folks have been very
3 attentive. Each of you have paid attention as far
4 as I can observe to everything that occurred. That
5 doesn't always happen. There are many times
6 there's boredom during the trial and you have all
7 kept your interest alive, and that is, you are to
8 be congratulated for that.

9 You have participated in a very, I'm sure
10 in some ways disheartening proceeding here. We all
11 have misgivings about many things, but you have
12 done everything according to the law, as much as
13 you could possibly do so. We thank you. That is
14 the most that I can say for the County, the State,
15 and that is thank you for your time and efforts.

16 I'm going to ask that everyone remain in
17 the Courtroom until this Jury has had an
18 opportunity to gather their belongings and leave
19 the Courtroom. You are released from any prior
20 instruction I gave you of silence concerning the
21 matter. If you care to discuss your experience
22 with anyone, you may do so from this point on. If

1 you care to keep your own counsel and not talk with
2 anyone, you of course have the right to do that.
3 Thank you again. You are excused.

4 (Jurors excused at 4:20 p.m.)

5 THE COURT: Everyone be seated,
6 please. Gentlemen, I'm going to request a PSI in
7 this matter. That has not been done, right?

8 MR. JUHASZ: Correct.

9 THE COURT: The Court, of course,
10 has to review the entire record and to
11 independently approve or disapprove. That will
12 take -- the last one took some time. I'll make
13 every effort to do that as soon as possible, it's
14 just a laborious task as you all know, and it was
15 an unusually long time to pick the Jury is going to
16 add to my time, because that portion of the trial
17 is not important.

18 The fact is, we picked a Jury and it is
19 the content of the trial itself that I need to
20 review. There's always a problem of getting some
21 portions typed. These girls can only work so many
22 hours a day, and it is easy to tell the reporter,

1 we need this typed and we have got to have it by
2 next Tuesday. That isn't always a very practical
3 order to give, because they have lives, too, and if
4 you work them more than 16 hours, they complain.
5 I'll make every effort to facilitate the thing as
6 much as possible.

7 I'll ask the Probation Department to
8 either come over and visit Miss Roberts in jail or
9 make arrangements for the sheriff to bring her
10 over, whatever is the wishes of the Probation
11 Department.

12 I wish to commend both sides by way of
13 counsel here. I have not had more than my share of
14 this type of case, but I have had enough to know
15 that they can be very difficult from a Judge's
16 perspective. And it makes it much easier when you
17 are dealing with attorneys on both sides who are
18 truly professional. I have had the opportunity to
19 have attorneys from both the State and the Defense,
20 who know the law very well, and I have to admit in
21 some areas, perhaps better than I do. You have
22 kept me working, too. It makes the entire process

1 easier to get through, and I suspect it makes for a
2 more just result, also.

3 Everybody has had their say and I hope
4 have been afforded a fair trial. This will be
5 reset for sentencing once the Court has reviewed
6 the matter. I thank you all very much.

7 (Court adjourned at 4:25 p.m.)
8
9
10

11 Friday, June 20, 2003; In Open Court at 1:50 p.m.:

12 Sentencing Hearing before Judge Stuard:

13 THE COURT: On May 28, 2003, a
14 Trumbull County Petit Jury returned a unanimous
15 verdict finding the Defendant, Donna Marie Roberts,
16 guilty of two counts of complicity to commit
17 aggravated murder, arising from the death of Robert
18 S. Fingerhut. Each count contained two
19 specifications of aggravating circumstances, listed
20 in division A of section 2929.04 of the Revised
21 Code.

22 Since Counts One and Two of the

1 indictment merge for sentencing purposes, the State
2 elected to dismiss Count Two and the specifications
3 thereto prior to the commencement of the mitigation
4 phase. Therefore, for purposes of this opinion,
5 the Defendant was convicted of the first count of
6 the indictment or purposely and with prior
7 calculation and design, causing the death of Robert
8 S. Fingerhut.

9 On June 4, 2003, the mitigation or second
10 phase of the trial began. The Jury in that phase,
11 unanimously found that the State had proven beyond
12 a reasonable doubt, that the aggravating
13 circumstances, to-wit, Specification One to Count
14 One, that the Defendant was a complicitor in
15 committing or attempting to commit or in fleeing
16 immediately after committing, or attempting to
17 commit aggravated burglary, and that the Defendant
18 committed the aggravated murder with prior
19 calculation and design. And Specification Two to
20 Count One, that the Defendant was a complicitor in
21 committing or attempting to commit or in fleeing
22 immediately after committing or attempting to

1 commit aggravated robbery. And that the Defendant
2 committed the Aggravated Murder with prior
3 calculation and design outweighed the mitigating
4 factors, and returned two verdicts recommending the
5 death sentence.

6 Pursuant to Revised Code, Section
7 2929.04(F), the Court is now obligated to file a
8 separate written opinion independently weighing the
9 aggravating circumstances of each specification
10 against the mitigating factors. The weighing
11 process reflected in this opinion is based upon
12 evidence heard by the Jury, but is done
13 independently and without regard to the findings of
14 the Jury.

15 Factually, the evidence at trial revealed
16 that the Defendant planned the murder of her
17 ex-husband and housemate, Robert S. Fingerhut, for
18 \$550,000 in insurance proceeds. The Defendant
19 plotted the murder for at least three months prior
20 to December 11, 2001. The Defendant corresponded
21 with her convict lover and codefendant, Nathaniel
22 Jackson while he was in prison at the Lorain

1 Correctional Institution.

2 She also accepted 19 collect telephone
3 calls from Jackson while he was incarcerated,
4 wherein they planned the details of the murder.
5 The telephone calls were recorded, and the letters
6 and phone calls were seized by police during the
7 course of the murder investigation.

8 The murder plot included a plan whereby
9 the Defendant would pick up Jackson from prison on
10 December 9, 2001, and take him to the Wagon Wheel
11 Motel in Boardman, Ohio, and rent a room with a
12 mirrored ceiling and Jacuzzi tub where they would
13 have sexual relations. The Defendant would obtain
14 handcuffs, a firearm, ski mask, leather gloves to
15 conceal fingerprints and would ensure Jackson
16 access to the Defendant's residence so that Jackson
17 could abduct the victim and take him out of the
18 house and kill him. The conspirators discussed
19 forcing the victim to watch the Defendant perform
20 oral sex on Jackson before executing the victim.

21 The Defendant planned to set up an alibi
22 at the time of the murder by driving around and

1 going to various retail outlets and shopping, where
2 she would be filmed by the store's video security
3 cameras, and the Defendant made several telephone
4 calls to Fingerhut's place of employment, the
5 Greyhound bus station in Youngstown, Ohio, to
6 ensure that Fingerhut timely left work at
7 approximately 9:00 p.m. on December 11, 2001.

8 The Defendant also provided Jackson with
9 a cellular phone to keep in contact with her while
10 she was driving a red Chrysler 300-M, which
11 contained its own cellular phone.

12 The Defendant had previously checked on
13 the insurance policies, to ensure that they were in
14 effect, and that the premiums were paid until the
15 end of 2001. The Defendant also discussed in the
16 letters and phone calls, obtaining a motel room for
17 Jackson after the killing, so Jackson could hide
18 out after the murder.

19 However, the plan began to go bad when
20 Jackson, who was in Fingerhut's residence,
21 sustained a gunshot wound to his left index finger
22 during a struggle with the victim. Jackson shot

1 Fingerhut three times including one fatal shot to
2 the head. Jackson left the victim's body in the
3 residence, took Fingerhut's car keys, and
4 Fingerhut's silver Chrysler 300-M from the garage
5 of the residence. Jackson drove Fingerhut's car to
6 Youngstown, Ohio, where he abandoned it
7 approximately three blocks from where he was
8 ultimately arrested on December 20, 2001.

9 A series of telephone calls occurred
10 between the Defendant's telephone and her red
11 Chrysler and her cellular telephone, which was in
12 the possession of Jackson during the time frame of
13 approximately 9:30 p.m. and 12 midnight, on
14 December 11, 2001. Between 9:30 p.m. and 10:30
15 p.m., the Defendant drove Jackson to the Days Inn,
16 in Boardman, Ohio, and rented him a room for one
17 week. Jackson's wound was treated and bandaged in
18 the room.

19 The Defendant returned to the residence
20 in Howland Township, Trumbull County, Ohio and
21 discovered her ex-husband's body just inside the
22 main door leading from the garage. The Defendant

1 called 911, and feigned hysteria. The Defendant in
2 her letters to Jackson, had discussed how she would
3 fake grief upon discovering that her ex-husband had
4 been killed.

5 Howland Township police officers
6 responded to the 911 call, and were met by the
7 Defendant. The police did not find any signs of
8 forced entry, and the only thing missing from the
9 residence were the victim's car keys and the
10 victim's automobile. Two wallets containing a
11 large sum of cash and credit cards as well as other
12 valuables were undisturbed inside the residence.

13 The Defendant told the officers that her
14 husband's car was missing, and granted them
15 permission to search the residence, and her vehicle
16 for evidence that might lead to the killer. And
17 during this search, police found approximately 140
18 letters from Jackson to the Defendant in her
19 dresser. And approximately 140 letters from the
20 Defendant to Jackson, in the trunk of the
21 Defendant's red car, in a paper bag bearing
22 Jackson's name, prison number.

1 As the investigation progressed, the law
2 enforcement officers were able to obtain the 19
3 recorded telephone conversations between the
4 Defendant and Jackson while Jackson was
5 incarcerated in the Lorain Correctional
6 Institution. These tapes constituted approximately
7 three hours of conversation. These telephone calls
8 along with letters which spanned the time frame of
9 approximately three months, revealed a continuing
10 and evolving plan to kill Fingerhut within days
11 after Jackson's release from prison.

12 Jackson was soon arrested at a house on
13 Wirt Street in Youngstown, Ohio, a few blocks from
14 where Fingerhut's vehicle was recovered. And a
15 pair of black leather gloves with fleece lining
16 were recovered from that house at the time of his
17 arrest.

18 In a letter written to Jackson, the
19 Defendant acknowledged that she had found thin,
20 fleece lined leather gloves. The recovered gloves
21 had gunshot residue, and a hole in the left index
22 finger along with the reddish substance, which

1 appeared to be blood in that area. This damaged
2 area matched the injury that Jackson had sustained
3 to his finger.

4 The evidence also revealed that the
5 Defendant, near the approximate time of the murder,
6 was seen driving her automobile in a very slow
7 manner away from the vicinity of the home where
8 Fingerhut lived. Furthermore, within two hours
9 from the last time Fingerhut was seen alive, the
10 Defendant rented a motel room at the Days Inn in
11 Boardman, Ohio for Jackson. In this room, bloody
12 bandages and other medical supplies were found by
13 hotel cleaning personnel and were subsequently
14 collected by the police.

15 Fingerhut's silver Chrysler, which had
16 been stolen by Jackson from the residence was
17 recovered in Youngstown, Ohio. Blood stains in and
18 on the vehicle were collected by law enforcement
19 officers. DNA analysis of the blood stains
20 collected on the trunk latch and the interior sun
21 visor, revealed that the blood matched the DNA
22 profiles of Nate Jackson, and the victim. Blood

1 stains collected from the Days Inn also matched the
2 DNA profile of Nathaniel Jackson.

3 The State also introduced evidence from
4 the letters that the Defendant and Jackson
5 discussed purchasing a new Lincoln or a Cadillac
6 Deville for Jackson. The Defendant and Jackson
7 repeatedly discussed waking up together on
8 Christmas morning. And the Defendant repeatedly
9 stated how much she hated Fingerhut.

10 Additionally, Fingerhut had two life
11 insurance policies with a combined benefit of
12 \$550,000. On December 12, 2001, shortly after
13 calling 911, Howland police officers noted the
14 Defendant's behavior, which included feigned crying
15 and listening in on conversations of investigators.
16 On December 12, 2001, shortly after calling 911,
17 the Defendant told investigators that she had been
18 out shopping at Wal-Mart, Super K-Mart, and Giant
19 Eagle. Police could only confirm that the
20 Defendant was at Wal-Mart at approximately 9:30
21 p.m. The Defendant never stated to police that she
22 had taken Jackson to the Days Inn in Boardman,

1 Ohio.

2 Later in the afternoon of December 12,
3 2001, the Defendant provided police with a list of
4 suspects who may have wanted to kill Fingerhut,
5 including an alleged homosexual lover of the
6 victim. A half Hispanic, half black man that the
7 Defendant had dated, a man named Santiago Mason.
8 And a number of people from the Greyhound bus
9 station. When investigators asked the Defendant
10 about Nathaniel Jackson and the Defendant stated,
11 "Oh, I almost forgot about him." And proceeded to
12 tell the officers that she had last seen Jackson on
13 Monday, December 10, 2001, and had last spoken to
14 him in the morning of Tuesday, December 11, 2001.

15 The investigation revealed that the
16 Defendant and Jackson worked together throughout
17 the afternoon and evening of December 11, 2001.
18 And the State presented evidence and testimony that
19 the Defendant took Jackson to get a haircut, ate
20 dinner with him at Red Lobster and was with him at
21 the Warren Greyhound bus terminal in Warren, Ohio,
22 which was the Defendant's place of employment.

1 One witness, Frank Reynolds, testified
2 that after Jackson's release from prison and prior
3 to the murder, he was present at the Youngstown bus
4 terminal when the Defendant asked Fingerhut for
5 \$3,000. When Fingerhut refused to give her the
6 money, she gave him a dirty look. The Defendant
7 had stated in her letters that she was tired of the
8 grinch doling out the money. And was referring to
9 Fingerhut providing her with a set amount of cash
10 to spend each week. The Defendant planned to
11 obtain a firearm for Jackson and to use it in order
12 to kill Fingerhut.

13 While the Defendant was supposedly in a
14 torrid love relationship with Jackson, she invited
15 the ex-con, Santiago Mason, into her residence
16 where she performed oral sex on him. When he
17 refused her further sexual advances to engage in
18 intercourse, Mason was accused by the Defendant of
19 stealing a .38 caliber firearm. Forensic evidence
20 revealed that the weapon used to kill Fingerhut was
21 consistent with the .38 caliber firearm. The
22 investigation revealed that Roberts was missing two

1 .38 caliber firearms at the time of Fingerhut's
2 murder.

3 In this case, the Jury found the
4 existence beyond a reasonable doubt, of two
5 aggravating circumstances, pursuant to Section
6 2929.04 (A)(7) of the Revised Code, to-wit,
7 Specification One to Count One, that the Defendant
8 was a complicitor in committing or attempting to
9 commit or in fleeing immediately after committing
10 or attempting to commit aggravated burglary, and
11 that the Defendant committed the aggravated murder
12 with prior calculation and design. And
13 Specification Two to Count One, that the Defendant
14 was a complicitor in committing or attempting to
15 commit, or in fleeing immediately after committing
16 or attempting to commit aggravated robbery, and
17 that the Defendant committed the Aggravated Murder
18 with prior calculation and design.

19 With respect to the aggravating
20 circumstances relating to the aggravated burglary,
21 the evidence presented at trial proved that the
22 Defendant allowed Jackson to trespass in

1 Fingerhut's residence, located at 254 Fonderlac
2 Drive, Howland Township, Trumbull County, Ohio,
3 with the specific purpose of killing Fingerhut with
4 prior calculation and design.

5 Jackson was wearing leather gloves and
6 armed with a firearm, which he used to shoot the
7 victim three times causing his death. The gloves
8 and the ski mask, firearm and access to the house
9 were all provided by the Defendant with prior
10 calculation and design, as evidenced by the
11 telephone calls and letters introduced by the
12 State. The Defendant assured the victim's arrival,
13 by checking at his place of employment, and
14 determining when he left work by calling him on the
15 telephone while he was on his way home.

16 The Defendant also checked on the status
17 of the life insurance policies and determined that
18 the premiums paid were up to the end of 2001, and
19 advised Jackson of the same. Pursuant to her plan
20 to kill Fingerhut, the Defendant took Jackson to a
21 motel room in Boardman, Ohio, and rented the room
22 for one week which was consistent with the plans

1 discussed in the letters and phone calls prior to
2 the murder.

3 Upon discovering Fingerhut's body, the
4 Defendant feigned grief exactly as discussed in her
5 letters with Jackson. During the course of the
6 investigation, the Defendant continually threw out
7 red herrings to the Howland Police by mentioning a
8 number of possible suspects, including alleged
9 homosexual lovers of the victim, her ex-boyfriends,
10 crazy people from the bus terminal in Youngstown,
11 and Santiago Mason. The Defendant only mentioned
12 Jackson, the convict she had corresponded with by
13 letters for three months, spoken to on the
14 telephone 19 times, picked up from prison and
15 engaged in sexual relations with just two days
16 prior, taken to get a haircut and ate dinner with
17 just hours previously and the person whom she had
18 driven to Boardman, Ohio on the night of the
19 murder, and who had an injured index finger, only
20 after the investigators confronted her with his
21 name.

22 From the aforementioned evidence, the

1 Court concludes that the Defendant committed the
2 aggravated murder as a complicitor, while
3 committing or attempting to commit or in fleeing
4 immediately after committing or attempting to
5 commit aggravated burglary. And that the Defendant
6 committed the aggravated murder with prior
7 calculation and design. With respect to the
8 aggravating circumstance related to the aggravated
9 robbery, after Jackson had murdered the victim, he
10 took the victim's set of keys and the silver
11 Chrysler, 300-M. Although the planned crime
12 involved Jackson stealing Fingerhut's car in order
13 to kidnap Fingerhut, it is clear that Jackson was
14 to take the victim's car to flee the residence.

15 The fact that Fingerhut struggled with
16 Jackson in the residence and was killed in the
17 residence, in no way, negates the Defendant's plan
18 that Jackson should steal the victim's car to
19 facilitate Jackson's own flight from the residence.
20 Ample DNA evidence was presented indicating that
21 Jackson was in the silver Chrysler 300-M following
22 the murder of Fingerhut. Additionally, phone

1 records were introduced showing that Jackson and
2 the Defendant called each other after the murder to
3 check on the status of the plan.

4 Finally, the vehicle was recovered a few
5 blocks from the location where Jackson was
6 arrested. The Defendant, in accordance with the
7 plan to kill Fingerhut, paid for a hotel room for
8 Jackson following the murder. The fact that the
9 silver Chrysler 300-M was found abandoned with the
10 victim's keys in the ignition, coupled with the
11 fact that the victim's wallet, money, credit cards
12 and other valuables were not stolen, clearly shows
13 that the plan to steal the victim's car with a
14 means of escape following the kidnapping and murder
15 of the victim was carried out in accordance with
16 the prior calculation and design, as set out by the
17 Defendant and Jackson.

18 From the aforementioned evidence, this
19 Court concludes that the Defendant committed the
20 Aggravated Murder, as a complicitor, while
21 committing or attempting to commit or in fleeing
22 immediately after committing or attempting to

1 commit aggravated robbery, and that the Defendant
2 committed the aggravated murder with prior
3 calculation and design.

4 Now, to be weighed against the
5 aggravating circumstances, the Court must weigh any
6 mitigating factors. On Tuesday, June 3, 2003, the
7 Defendant appeared in-chambers and on the record
8 with her retained attorneys, J. Gerald Ingram and
9 John B. Juhasz, and her retained psychologist,
10 Thomas Eberle. The State was present and
11 represented by Assistant prosecutor Kenneth N.
12 Bailey and Christopher D. Becker.

13 At that time, the Defense indicated to
14 the Court that the Defendant had been evaluated by
15 Dr. Eberle for her competency to waive mitigating
16 evidence. And that in the doctor's opinion, she
17 was competent to do same.

18 This Court personally addressed the
19 Defendant and inquired of her as to the importance
20 of presenting mitigating evidence, the use of such
21 evidence to offset the aggravating circumstances,
22 and the effect of failing to present such evidence.

1 The Court was assured at that time by the
2 Defendant, that she understood these concepts by
3 both Defense counsel and Dr. Eberle. This Court
4 personally inquired whether the Defendant desired
5 to waive the right to present mitigating evidence.
6 The Court having found no evidence to contradict
7 Dr. Eberle's findings on the Defendant's
8 statements, and her express desire to waive the
9 presentation of mitigating evidence, then found
10 that the Defendant was competent to waive her
11 presentation of mitigating evidence, and had done
12 so knowingly, voluntarily and intelligently, and
13 the Defendant indicated to the Court, that she only
14 desired to make an unsworn statement to the Jury,
15 which she was advised she was permitted to do and
16 would be permitted to make on June 4, 2003, which
17 was the date previously scheduled for the
18 mitigation or second phase.

19 On Wednesday, June 4, 2003, the Defendant
20 made an unsworn statement during which she stated
21 to the Jury that there were no mitigating factors,
22 and during which she requested the Jury to impose

1 the death sentence. This statement was articulate,
2 coherent and well organized. The statement lasted
3 approximately one hour, during which the Defendant
4 showed no difficulty or fear in addressing a large
5 group of individuals, including the Jury, and a
6 large number of Courtroom observers. The Defendant
7 spoke freely and although she had with her prepared
8 notes, she often extemporized.

9 Despite the preceding that I have
10 outlined, the Court is still bound to make an
11 independent weighing of any and all mitigating
12 factors that it feels may exist in this case
13 against the aggravating circumstances. The
14 Defendant in this case was not the principal
15 offender. Pursuant to section 2929.04 (B)(6), the
16 Court considers this factor, but gives it very
17 little weight.

18 The Defendant committed the Aggravated
19 Murder during the course of the commission of both
20 an aggravated burglary and aggravated robbery. The
21 record is replete with instances where the
22 Defendant actively planned this Aggravated Murder

1 with prior calculation and design in order to
2 collect \$550,000 in life insurance proceeds. The
3 Defendant's plan included buying her codefendant a
4 new Cadillac or Lincoln in exchange for killing her
5 ex-husband, promises of trips, a nice home in a
6 wealthy neighborhood, an overall 180 degree change
7 in life style for Nathaniel Jackson, her
8 codefendant.

9 The record is overwhelming that, but for
10 the Defendant's planning and actions, the victim
11 would be alive today. The Defendant discussed and
12 planned for months with the principal offender, how
13 they would kill the victim. The Defendant checked
14 on the status of the insurance policies in order to
15 ensure that she would be able to collect the
16 proceeds, and advised the principal offender of the
17 status of the policies. The Defendant then
18 transported the principal offender in the
19 Aggravated Murder from prison to a predetermined
20 location, in order to engage in love making before
21 the murder.

22 The Defendant fed the principal offender

1 prior to the crime. The Defendant provided the
2 principal offender with gloves, a ski mask, murder
3 weapon and hideout after the Aggravated Murder, all
4 as planned and discussed prior to the Aggravated
5 Murder.

6 The Defendant gave the principal offender
7 entry into the residence of the victim for the sole
8 and exclusive purpose of killing the victim. This
9 plan was clearly discussed in both the letters, and
10 recorded telephone conversations, including the
11 last telephone call on December 8, 2001, the day
12 before the principal offender was released from
13 prison. The Defendant failed to advise police of
14 her relationship with the principal offender until
15 she was confronted with the evidence of the
16 relationship by the police. And prior to being
17 confronted by the existence of this relationship,
18 the Defendant gave the police a number of red
19 herrings implicating a number of potential
20 suspects, but never mentioned the relationship with
21 the principal offender, and her discussions with
22 him regarding the Aggravated Murder of Robert

1 Fingerhut.

2 The Court gives very slight weight to the
3 fact that the Defendant indicates in her letters
4 that the victim may have been physically abusive to
5 her. This factor is pursuant to section 2929.04
6 (B)(1)(2). However, the existence of this factor
7 is given very slight weight due to the fact that it
8 is unsubstantiated, and even if it were true, would
9 not warrant the Defendant's action in this case.

10 The Court gives very little weight to the
11 Defendant's unsworn statement. During the course
12 of her unsworn statement the Defendant apologized
13 to her Defense team and thanked them for the hard
14 work. The few positive things gleaned from this
15 statement were overshadowed by the Defendant's
16 personal attacks, and statements that were clearly
17 contrary to the evidence. The Defendant denied
18 guilt and personally attacked the jurors by
19 claiming they were not a judge of her peers, not a
20 Jury of her peers.

21 The Defendant accused the lead
22 investigator as being motivated solely by career

1 advancement and accusing him of obstruction of
2 justice and perjury. The Defendant referred to the
3 other investigators as lackeys and claimed that one
4 member of the Prosecution team was anti-Semitic and
5 racist.

6 The Defendant also chastised jurors for
7 being uninformed about current events. The
8 Defendant also stated to the Jury that she and the
9 victim had a loving relationship, and planned to
10 live happily ever after.

11 These statements are in direct
12 contravention of her statements in the letters and
13 the phone calls expressing her desire and wishes
14 that the victim meet an untimely death, and her
15 desire to marry and live with Nathaniel Jackson.

16 The Defendant also appeared to brag to
17 the Jury that she and the deceased have earned over
18 \$200,000 per year and that the \$550,000 in life
19 insurance proceeds was of little value to her,
20 because of that sum would only sustain her for a
21 few years. It is difficult for this Court or any
22 finder of fact to give any weight to such a

1 statement.

2 Pursuant to section 2929.04 (A)(7), the
3 Court will give very slight weight to the
4 Defendant's behavior during the course of this
5 trial. The Defendant was courteous, pleasant and
6 properly addressed the Court at all times. The
7 Defendant appeared intelligent and interested in
8 the proceedings, and appeared to assist in her
9 defense at all times. The Defendant presented no
10 security problems to this Court and those who
11 transported her to Court each day.

12 Now the Court has carefully and
13 independently weighed the accumulation of all of
14 the mitigating factors against each aggravating
15 circumstance separately, as to each of the two
16 specifications. In other words, the Court has
17 weighed the evidence twice, first the Court weighed
18 all of the mitigating factors against the
19 aggravating circumstances surrounding the
20 aggravated burglary, and then the Court engaged in
21 second weighing, whereby the Court again weighed
22 all of the mitigating factors against the

1 aggravating circumstances surround the aggravating
2 robbery.

3 With respect to the first weighing of the
4 aggravating circumstances relating to the
5 aggravated burglary against all of the mitigating
6 factors, this Court finds that the aggravating
7 circumstances not only outweigh the mitigating
8 factors by proof beyond a reasonable doubt, but in
9 fact, they almost completely overshadow them.

10 The legislature of the State of Ohio, has
11 recognized that under certain circumstances, the
12 death penalty is an appropriate sanction to a
13 Defendant who commits an Aggravated Murder during
14 the commission of certain felonies. In the case at
15 bar, the underlying felonies were aggravated
16 burglary and aggravated robbery. In this
17 particular case, the Court accords substantial
18 weight to the aggravated burglary specification and
19 the weighing process.

20 In order to prove an aggravated burglary,
21 the State is required to prove that a Defendant
22 trespassed in an occupied structure, for the

1 purpose of committing a criminal offense. In this
2 particular case, the Defendant purposely had her
3 codefendant trespass in the occupied structure of
4 Robert S. Fingerhut, with the specific purpose of
5 committing an Aggravated Murder, which had been
6 meticulously planned over a number of months with
7 prior calculation and design.

8 Under the facts of this case, this Court
9 cannot see any other form of aggravated burglary
10 where the weight of this particular aggravating
11 circumstance could ever be greater. The evidence
12 reveals that the aggravated burglary was committed
13 for the sole purpose of killing Robert S.
14 Fingerhut, pursuant to a planned and methodical
15 execution scheme designed by the Defendant and her
16 codefendant and whereby the Defendant would collect
17 \$550,000 in insurance proceeds. This is a most
18 heinous form of aggravated burglary and is entitled
19 to unsurpassed weight.

20 In this Court's view, this aggravating
21 circumstance standing alone, outweighs all of the
22 mitigating evidence in this case. Therefore, with

1 respect to Specification One to Count One, this
2 Court concurs with the Jury's recommendation, and
3 finds that the death sentence is an appropriate
4 penalty.

5 With respect to the aggravating
6 circumstances of the aggravated robbery, the Court
7 concedes that this offense is not quite heinous as
8 the circumstances surrounding those concerned with
9 the aggravated burglary; however, the aggravated
10 robbery was clearly committed to facilitate the
11 escape from the Aggravated Murder, and is extremely
12 close to being the worst form of aggravated
13 robbery. This statement is galvanized by the fact
14 that the aggravated robbery was planned by the
15 Defendant to be part of a kidnapping, whereby the
16 victim was to be removed, taken to a different
17 location where the Defendant would then engage in
18 oral sex with her codefendant, while the Defendant
19 was forced to watch prior to his execution. This
20 plot is clearly spelled out in the letters between
21 the Defendant and codefendant. The plan clearly
22 went awry when the victim engaged the codefendant

1 in the struggle at the residence. Again this
2 scheme was hatched for the purpose of the Defendant
3 collecting the \$550,000 in insurance proceeds.

4 Therefore, the aggravating circumstance
5 specification relating to the aggravated robbery,
6 when weighed against all of the mitigating factors
7 in this case, clearly and undeniably outweighs by
8 proof beyond a reasonable doubt, all of the
9 mitigating evidence in this case.

10 Therefore, with respect to Specification
11 Two to Count One, the Court concurs with the Jury's
12 recommendation and finds that the death sentence is
13 the appropriate penalty. The Court recognizes that
14 the death sentence recommendation by the Jury must
15 be merged and the Court does hereby merge the death
16 sentences for purposes of sentencing.

17 For the reasons set forth herein, and
18 after independently and separately weighing the
19 aggravating circumstances against all of the
20 mitigating factors, it is the judgment of this
21 Court that the Jury's recommendation is accepted,
22 and the Court does find that the sentence of death

1 is the appropriate penalty in this case.

2 Counsel approach the bench, please.

3 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT OF
4 HEARING)

5 THE COURT: The Court has asked at
6 side bar if counsel for either side wish to place
7 anything on the record before this Court proceeds
8 with sentencing. Mr. Ingram, I believe you wish to
9 address something.

10 MR. INGRAM: Your Honor, the record
11 should reflect that in pronouncing sentence, you
12 have apparently read from a written decision that
13 you have prepared in advance. I guess I would ask
14 if I am correct in that assumption?

15 THE COURT: That is correct.

16 MR. INGRAM: As you read that
17 decision, Mr. Bailey sat at the Prosecution table
18 and reviewed a document as if he was reading along.
19 Every time you turned the page, Mr. Bailey turned
20 the page. I would now ask on the record, that
21 Mr. Bailey be required to identify the documents
22 which are sitting in front of him.

1 THE COURT: Mr. Bailey is referring
2 to a document that I have had prepared. I have
3 outlined the sum and substance of it to the
4 Prosecution. They have a computer over there which
5 you are aware of, Mr. Ingram, we have used
6 throughout the trial, which makes it convenient to
7 correct, delete from a master copy and to come up
8 with a form that is present, which I presently
9 used.

10 MR. INGRAM: Well, the record should
11 reflect the vehement Defense objection to the
12 State's participation in the drafting of the
13 Court's sentencing decision in ex parte proceeding.
14 We did not know this, we did not know of this.
15 That is prohibited. I would ask that those
16 documents be sealed and become part of the
17 Appellate record in this case.

18 THE COURT: That will be done.

19 MR. INGRAM: I would ask that they
20 be given to the Court Reporter at this point.

21 THE COURT: Mr. Bailey, please
22 deliver that copy.

1 MR. INGRAM: May I see it? May I
2 ask Your Honor, when at what point in time, the
3 exchanges between you and Mr. Bailey occurred?

4 THE COURT: I don't recall. That
5 was probably about Wednesday.

6 MR. INGRAM: Was there one such
7 exchange or more than one exchange?

8 THE COURT: I believe that there was
9 one exchange.

10 MR. INGRAM: We would also note an
11 objection to the Court's depriving the Defendant of
12 the right of allocution. We object to the Court
13 depriving the Defendant of her right of allocution.

14 THE COURT: Your objection is noted.

15 MR. BAILEY: We haven't reached a
16 point of allocution yet. We're just getting to
17 that point. The Court had to do the independent
18 weighing and now we're at the point where the Court
19 has to advise the Defendant of her Appellate rights
20 and of allocution.

21 THE COURT: I have to advise of Rule
22 32 now.

1 MR. JUHASZ: The objection is
2 because the Court has already determined sentence
3 without having heard from the Defendant. Normally
4 in sentencing proceedings, the Court hears from the
5 Defendant before making a determination of the
6 appropriate sentence. That is the basis for the
7 objection.

8 THE COURT: Okay. Could I see
9 counsel?

10 (In-chambers at 2:30 p.m.)

11 (OFF THE RECORD)

12 THE COURT: We're in-chambers in
13 conference. Are you waiving presence of the
14 Defendant?

15 MR. INGRAM: Yes.

16 THE COURT: Mr. Ingram, you have
17 another question?

18 MR. INGRAM: Based upon our exchange
19 a few moments ago in the Courtroom, it is my
20 understanding that a draft or some document
21 relating to the Court's pronouncement of sentence
22 was provided to the Prosecuting Attorney on

1 Wednesday.

2 THE COURT: I believe it was
3 Wednesday. I asked them to type this up and get a
4 copy back, so that we would all have it when I was
5 reading through it. You weren't given a copy of
6 it, and I apologize for that.

7 MR. INGRAM: We should probably ask
8 that that document that was provided to the
9 Prosecuting Attorney on Wednesday also be marked
10 and sealed as part of the Court's Exhibit in this
11 matter.

12 THE COURT: Okay.

13 MR. BAILEY: The only thing left is
14 the final one. All prior ones were thrown out.
15 There were six or seven of them.

16 MR. INGRAM: There's six or seven
17 drafts?

18 MR. BAILEY: Not six or seven
19 drafts, there's one draft and there's corrections
20 and all of the corrections with the draft were
21 pitched.

22 MR. INGRAM: Who made the

1 corrections?

2 MR. BAILEY: We made or the Court.
3 We kept finding typo's.

4 THE COURT: Whatever you have, if
5 you have something, bring it over.

6 MR. BECKER: Let me explain
7 something here. This is my understanding of what
8 we were supposed to do. We were to take that and
9 put it on the computer and print out the hard copy
10 of the sentencing order, which is what we did. As
11 Ken and I would proofread it for typographical
12 errors, it was changed and just saved on the hard
13 drive of the computer. It was never printed out
14 and kept as draft after draft after draft. I would
15 type over the hard drive, and prepare it.
16 Eventually a final copy was provided to the Court
17 and I think the Court had some typographical errors
18 and maybe some changes.

19 THE COURT: I made one phone call
20 back to you.

21 MR. BECKER: And the Court had
22 indicated some changes. I just simply changed

1 that. Essentially what I did, because I typed the
2 whole thing was I was the Court's typewriter, the
3 Court's secretary.

4 THE COURT: We used that -- we don't
5 have the equipment here or the know-how to do
6 things expeditiously. That is the way we were able
7 to get the final instructions.

8 MR. BECKER: That is the way Jury
9 instructions are done. Now I think --

10 THE COURT: We have had this come
11 up. Tony Consoldane always raises this issue about
12 the Prosecutor typing stuff as if the Prosecutor
13 is -- and it may be a legitimate point, I don't
14 know. It is the system that is used here because
15 it is the most practical.

16 MR. INGRAM: Does anybody have the
17 first draft? They do not. Do you?

18 THE COURT: No. I don't have
19 anything, no.

20 MR. INGRAM: Who wrote the first
21 draft?

22 THE COURT: I gave notes saying this

1 is what I want. This, this and this, and they sent
2 it back. I read it over, made some corrections,
3 went back from there.

4 MR. INGRAM: The record should
5 simply reflect that in this process, Defense
6 counsel was never involved, nor consulted. Other
7 than that, I have nothing further.

8 MR. BECKER: I just want to address
9 something on record here. Rule 32 states that
10 sentence shall be imposed without unnecessary
11 delay. Sentence shall be imposed without
12 unnecessary delay. Pending sentence, the Court may
13 commit the Defendant or continue or alter the bail.
14 At the time of imposing sentence, and it doesn't
15 necessarily say before sentence is imposed, it says
16 at the time of imposing sentence, the Court shall
17 do all of the following: Afford counsel an
18 opportunity to speak on behalf of the Defendant and
19 address the Defendant personally and ask if he or
20 she wishes to make a statement in his or her own
21 behalf; afford the Prosecution to make an
22 opportunity to speak; afford the victims the right

1 provided by law; and then notify and then after --
2 it is very specific, the rule says after imposing
3 sentence in a serious offense, the Court shall
4 advise the Defendant has the right to appeal. I
5 think what is important is Rule 32 does not say
6 before imposing sentence, Defendant or counsel
7 should be afforded an opportunity, it says at the
8 time of imposing sentence. We haven't had the
9 sentence. I don't think the actual sentence has
10 been handed down. That is an important
11 distinction. The Court by law had to make an
12 independent weighing and circumstances.

13 THE COURT: Well, the record is
14 clear as to what has happened. If you have a point
15 on appeal, you have got a point on appeal.

16 MR. INGRAM: Thank you.

17 (End of in-chamber discussion)

18 (Back in Open Court)

19 THE COURT: Gentlemen, would you
20 have your client come forward, please? Does the
21 Defendant wish to address anything prior to
22 sentencing?

1 THE DEFENDANT: Yes, I think I
2 would. I would like to have one of those notes
3 back. Short and sweet this time. You probably
4 wonder why I did what I did about asking for the
5 death penalty. Because I think one small voice for
6 justice is going to count. Maybe if it is for only
7 one person some day. I didn't want to take the
8 stand on race equality and the criminal justice
9 system. Criminal justice, an oxymoron, and two, to
10 expose and ask corrupt police officials who use a
11 badge to destroy rather than protect lives for
12 their own gain by committing perjury, planting and
13 transferring evidence, tampering, and using race
14 and religion to condemn. Thank you.

15 Thank you for your decision. I was a
16 little worried you might try to find something not
17 to do that. I appreciate what you did. Thank you.

18 MR. INGRAM: The record should
19 reflect my migraine has returned. We have nothing.

20 THE COURT: Counsel have nothing
21 further?

22 MR. INGRAM: No.

1 THE COURT: Miss Roberts, you have a
2 right to appeal the conviction filed in this case.
3 I would ask you, it is my duty to appoint counsel
4 to perfect that appeal for you. I have had some
5 indication from someone that you may wish to hire
6 your own counsel or do you wish the Court to
7 appoint someone to represent you?

8 MR. INGRAM: May I answer this
9 question?

10 THE COURT: Yes.

11 MR. INGRAM: The appeal in this
12 matter would be due in 45 days. Donna, along with
13 Mr. Juhasz and I will make Appellate decisions in
14 due course, and at this time, there's no request
15 for Court appointed Appellate counsel.

16 THE COURT: There's no request?

17 MR. INGRAM: No request not at this
18 juncture.

19 THE COURT: I would ask you to
20 apprise me, because the Supreme Court insists that
21 within a certain time period, within two weeks, I
22 have to either appoint Appellate counsel or they

1 are not completely happy with me.

2 MR. INGRAM: Okay.

3 THE COURT: As I said, you have an
4 absolute right to file an appeal in this case, it
5 would be the Supreme Court to review the actions of
6 this Court and this Jury. If you are unable to pay
7 the cost of that appeal, the appeal will be
8 perfected with no cost to yourself and counsel will
9 be appointed with no cost to you. Any papers,
10 other expenses you are unable to pay for will be
11 provided by this Court. You have the right to have
12 a notice of timely appeal filed on your behalf. If
13 you fail to do that, this Court will see that that
14 is done. Do you have any other questions about any
15 of that at this time?

16 THE DEFENDANT: No. Jerry says no.

17 THE COURT: Anything that the
18 Defense or the Prosecution wish to place on the
19 record at this time before the Court enters
20 sentence?

21 MR. INGRAM: Only that you take this
22 and mark it as a Court's Exhibit for sentencing

1 purposes.

2 THE DEFENDANT: I just request that
3 that fairy tale you told, not be told to children
4 at night. Thank you.

5 THE COURT: The Court has considered
6 the record and oral statements made as well as the
7 principles and purposes of sentencing under Ohio
8 Revised Code 2929.11, and has balanced the
9 seriousness and recidivism factors of O.R.C.
10 Section 2929.12. Pursuant to law, the Trial Court,
11 this day, June 20, 2003, having determined in a
12 separate opinion of specific findings that the
13 aggravating circumstances as to the count of
14 Aggravated Murder, outweigh the mitigating factors
15 by proof beyond a reasonable doubt, then made
16 inquiry as to whether the Defendant had anything to
17 say, why judgment should not be pronounced against
18 her. And the Defendant in answer showed no good
19 cause or sufficient reason why sentence should not
20 be pronounced. Are you wondering what I am reading
21 from?

22 MR. INGRAM: I am wondering what

1 Mr. Bailey is reading from. Mr. Bailey is reading
2 from a sentence.

3 MR. BAILEY: This is Nathaniel
4 Jackson's.

5 THE COURT: This is a copy of
6 Nathaniel Jackson's, which I have altered. The
7 Court has considered the factors under Ohio Revised
8 Code 2929.14 and makes the following findings. The
9 shortest prison term will demean the seriousness of
10 the Defendant's conduct; two, the longest prison
11 term is appropriate because the Defendant committed
12 the worst form of the offense; number three,
13 multiple prison terms are necessary to protect the
14 public from future crime and to punish the
15 offender; number four, consecutive prison sentences
16 are not disproportionate to the seriousness of the
17 Defendant's conduct and to the danger the
18 Defendant, the offender, opposes to the public.
19 Five, the harm caused by the multiple offenses was
20 so great that no single prison term for any of the
21 offenses committed as part of a single course of
22 conduct adequately reflects the seriousness of the

1 Defendant's conduct.

2 It is therefore Ordered and Adjudged and
3 Decreed that the Defendant, Donna M. Roberts, be
4 taken from the Courtroom to the Trumbull County
5 jail, and from thence to the correction reception
6 center at Lorain -- I'm sorry, at Marysville, Ohio.

7 Counsel approach for a moment, please.

8 (SIDE BAR DISCUSSION, OFF THE RECORD AND
9 OUT OF HEARING)

10 THE COURT: I'll read this over
11 again. It is therefore Ordered and Adjudged and
12 Decreed that Defendant, Donna M. Roberts, be taken
13 from the Courtroom to the Trumbull County jail,
14 from thence to the correction reception center at
15 Marysville, Ohio, and thereafter be sentenced to
16 death on January 11, 2004 on Count One. And
17 imprisoned therein for the stated prison term of
18 ten years on Count Three, plus a mandatory term of
19 three years on the firearms specification, to be
20 served prior to and consecutive to the sentence
21 imposed in Count Three. Ten years on Count Four,
22 plus a mandatory term of three years on the

1 firearms specification, to be served prior to and
2 consecutive to the sentence imposed in Count Four.
3 Sentence in Count Four to be served consecutively
4 to the sentence imposed on Count Three. The
5 firearms specification in Counts Three and Four
6 shall merge as one sentence in Count Three as
7 matter of law.

8 The Defendant is ordered to pay the cost
9 of prosecution, once that is determined, for which
10 execution is awarded. That is the judgment of this
11 Court.

12 Miss Roberts, I can't think of a more
13 unpleasant thing that anybody is called upon to do
14 than to sit here and review a record like this.

15 THE DEFENDANT: I know.

16 THE COURT: My heart goes out to
17 everyone that was involved in this thing. I think
18 as most people who look at it, think that you used,
19 you appear from all of the contact I have had with
20 you, to be a normal person, which makes it more
21 difficult to explain the actions that the State has
22 been able to put forth. And it almost appears to

1 me that it was an abandoned, where there was no
2 thought of what was going to happen tomorrow or the
3 next day or down the road, almost some sort of a
4 fantasy world that you were living in. But all of
5 our actions have consequences, and sadly, yours
6 have brought you to this point. I do say this,
7 with heartfelt sincerity though, I wish you well.

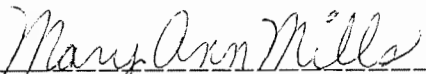
8 THE DEFENDANT: Thank you, Sir.

9 MR. INGRAM: Thank you.

10 (End of Sentencing Hearing at 3:00 p.m.)
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REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.



MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio